THE COURT FEES ACT, 1870

AND

THE SUITS VALUATION ACT, 1887

AS AMENDED TO JUNE 1935

IMPORTANT WORK BY THE SAME AUTHOR

M. N. BASU'S

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was published in February
up to the end of January
The notes and commenta
that they may be available
and expenditure of time
in the completest manner. It is hardly necessary to say that the recent provincial amendments are duly embodied in the volume as also the texts of the superseded enactments from the earliest times. The book is handy and excellently got-up. A statement of repeals and amendments Comparatively tables and carefully prepared alphabetical list of cases and subject index, in fact everything one would expect from a conscientious worker like Mr. Basu go to make it as complete a book of reference on the law of non-judicial stamp duties as one may desire"

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THE

COURT FEES ACT

(VII OF 1870)

AND THE

SUITS VALUATION ACT

(VII OF 1887)

WITH ACT XIX OF 1922 THE AMENDMENT ACTS OF ASSAM, BENGAL, BIHAR AND ORISSA, BOMBAY, C. P., MADRAS, THE PUNJAB, AND U. P. UP TO 1935 INTRODUCTION, EXHAUSTIVE COMMENTARIES, RULINGS OF THE PRIVY COUNCIL AND OF THE SEVERAL HIGH COURTS AND CHIEF COURTS IN INDIA, CIRCULARS, ORDERS, LATEST RULES AND NOTIFICATIONS AS TO REDUCTIONS AND REMISSIONS OF COURT FEES AND OTHER RULES BY THE GOVERNMENT OF INDIA, THE LOCAL GOVERNMENTS AND THE HIGH COURTS AND RULES UNDER THE SUITS VALUATION ACT CORRECTED UP TO JUNE 1935 COMPARATIVE TABLES &c., &c., &c.

BY

RAI SAHIB M. N. BASU, M.A., B.L.,

Advocate, High Court, Stamp Reporter to the High Court of Calcutta, Author of the Indian Stamp Act, etc., etc.

SIXTH EDITION

(Revised & Enlarged)

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PREFACE TO THE SIXTH EDITION

My thanks are due to the profession for the appreciation shown to the previous editions of this book. The contemplated amendments by the Provincial Legislatures deterred me from taking up a revision of this work earlier

In this edition I have discussed many new topics not included in the previous editions and many portions have been re-written The case-laws reported up to date have been incorporated. In arranging the case laws I have kept in view the needs of a busy practitioner The guiding principle is that the prayers in the plaints must always be looked to in assessing court-fees and I have noted the rulings with reference to the same

Since the publication of the last edition financial conditions have obliged some Provincial Legislatures to amend the Court Fees Act, 1870. The Bombay Legislature, the U P. Legislature and the C P Legislature have each made extensive amendments The Bombay amendment expires on 31st March, 1936, and the U P amendment in June 1936. The C. P Amendment which came into force from the 1st July 1935 remains in force till March 1943 The Bengal Amendment Act, XI of 1935, remains in force for three years from the 1st June 1935, so far as the increased duties on Probates and Succession Certificates are concerned The Bengal Amendment Act (VII of 1935) was designed to remedy evasions of duty.

I have incorporated the principal features of the amendments in the body of the original Act and have also printed the Amending Acts separately. So, in construing the provisions of the Act, reference may be made to the actual language used by the Legislature.

HIGH COURT,

M. N BASU

Calcutta, 11th July, 1935.

PREFACE TO THE SECOND EDITION

I am grateful to the legal profession for the kind appreciation shown to this book

The delay in bringing out the Second Edition is due to my want of time I have thoroughly revised the book with special care and have remedied all the defects. The Amending Acts of all the Provinces have been incorporated

The extent of difficulty in reconciling the various interpretations will appear from the following observations of the Patna High Court in the Full Bench Case of *Krishna Mohan Singha* v *Raghunandan Panday*, I L R 4 Patna Series 336 at page 349, where the learned Chief Justice said "the wording of this Act is in some respects certainly unscientific and difficult to interpret and its interpretation has been the subject of a multitude of decisions in the Courts"

The case-law up to end of June 1925 has been incorporated and the rules have been brought up to date

HIGH COURT,

Calcutta, 15th July, 1925.

M. N. BASU.

PREFACE TO THE FIRST EDITION

In this little book I have attempted not merely to explain the various sections of the Acts in the light of the decisions of the High Courts, but also to reconcile the decisions of the several High Courts wherever they appear to be conflicting How far I have succeeded it will be for the profession to judge

For facility of reference I have divided the topics under various headings and sub-headings Topics like method of valuation of suits to be instituted in Courts, Death Duties, the apparent conflict between valuation under the Suits Valuation Act and that under the Cour Fees Act have been discussed with special care.

The latest amendments made by the various provinces up to date have been noted in their proper places, and all the Amendment Acts with complete Schedules printed at the end of the book The recent amendment of the Legislature of Section 4 of the Court Fees Act, 1870, by Act XIX of 1922, which received the assent of the Governor-General on the 3rd October, 1922, has also been incorporated

The case-law has been noted up to end of October, 1922, and having regard to the importance of the Rules, I have incorporated the *Revised Rules* of the Government of India and of the several Provinces and High Courts

My thanks are due to Mr I N. De, M A, B L, *Vakil*, who materially assisted me in passing the book through the press.

I will consider myself highly rewarded if this book proves useful to those for whom it is intended.

HIGH COURT,

Calcutta, 15th November, 1922.

M. N. BASU.

TABLE OF CONTENTS

INTRODUCTION

History:—From the earliest times, even under the Hindu Law, attempts have been made to put down false and vexatious litigation by making parties in fault pay a fine to the King A successful suitor was made liable to pay something to the King evidently as a compensation for the expense the State had to incur in paying the judicial officers Although more modern writers have urged abolition of taxation of litigation there is much that can be said in favour of its retention

During the earliest years of British rule there was no tax upon litigation in India The result was that the number of false and vexatious suits went on increasing year after year. To remedy this evil, Regulations imposing taxes on litigation were passed in the several Presidencies

In Bengal, Bengal Regulation XXXVIII of 1795 was passed imposing an institution fee in civil suits This institution fee was converted into stamp duties by Ben Reg VI of 1797 Ben Reg X of 1797 imposed duties on criminal suits, and II of 1798 on applications for review These Regulations were repealed by Reg I of 1814, which was followed by Regs XXVI of 1814, IV of 1817, XV of 1816, XIV of 1824, and II of 1825. Ben. Reg X of 1829 which Reg VIII of 1831 imposed nt, and Reg. XV of 1845 exempted Indian officers and soldiers from payment of stamp duty

In Bombay, the earliest Regulation was Bombay Regulation VIII of 1802 which was followed by Bombay Regulations XIV of 1815, VII of 1816, IV of 1817 These were all repealed by Bombay Regulation I of 1827 which was replaced by Bom. Reg XVIII of 1827.

In Madras, the earliest Regulation was Madras Regulation III of 1782 This was followed by Mad Reg. IV of 1808, V of 1808, VIII of 1808, XVIII of 1808, II of 1816, II of 1817 and VI of 1817.

All these Regulations of the different provinces were amalgamated into one Act XXXVI of 1860, which for the first time enacted the law for the whole of British India This was followed by Act X of 1862, Act XI of 1863, Act X of 1865, Act XVIII of 1865 and Act XXVI of 1867 which made some documents documents hitherto exempt, liable to stamp duty

Act XXVI of 1867 was repealed by the Court Fees Act VII of 1870 which again was modified in the same year by Act XVII

of 1870 Several additions were made to the Act VII of 1870, by subsequent amendments

By the Devolution Act (XXXVIII of 1920), the various Provinces have been empowered to fix their court-fees in their respective Provinces In accordance with this Act, several amendments to the Act VII of 1870 have been made by the different provinces in 1922, 1923 and 1926, and later years.

The purpose of all those Acts is the same, *viz*, to secure revenues to the State but in doing so, they do not 'arm a litigant *with a weapon of technically against his opponent*' (43 Bom. 507 P C)

Need for Amendment:—The sections deal with separate topics and are ambiguous when taken in connection with other sections The reason being that the Act was amended piece-meal and no attempt has been made to keep the amendments in conformity with the amendments of other Acts

In the case reported in 18 C L J, 308 at page 316, Mr Justice Mookerjee said: "The question raised is of considerable nicety and by no means free from difficulty which is attributable to the fact that the Court Fees Act has been amended piece-meal from time to time," and his Lordship said again at p 317, "the mode of interpretation of a Statute like the Court Fees Act, which has been repeatedly amended is not to consider the individual sections, but to take them as a whole and to give effect to the legislative intent upon a particular matter."

In *Chuni Lal v Sheo Charan Lal Lalman*, 47 All 756 at p 759, the Allahabad High Court said: "The difficulty is really due to the circumstance that the amendments of the Court Fees Act have not kept pace with the amendments of the Code of Civil Procedure In 1870, when the Court Fees Act was passed, Act No VIII of 1859 as amended by the Act of 1860, was in force Under those Acts there was no such thing as a preliminary decree distinct and separate from a final decree"

In *Krishna Mohan Singh v Raghunandan Panday*, F B, I L R 4 Patna 336 at page 349 the learned Chief Justice said: "the wording of this Act is in some respect certainly unscientific and difficult to interpret and its interpretation has been the subject of a multitude of decisions in the Courts"

S 11 of the Court Fees Act still refers to *mesne* profits to be ascertained in execution proceedings which is contrary to the provisions of Ord. 20, Rule 12, C. P. C

Sch II, Art 11, also requires modification in view of modifications in other Statutes.

Scheme of the Act:—The Court Fees Act deals with documents to be filed before the Civil and Revenue Courts and fees payable on certain documents to be filed before Criminal

INTRODUCTION

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Scheme of the Act:—The Court Fees Act deals with documents to be filed before the Civil and Revenue Courts ar fees payable on certain documents to be filed before Crin

Courts and certain other offices specified in First and Second Schedules to the Act

The Act has no application to cases filed before the High Courts in their "Original Side" and before the Presidency Small Cause Courts, for which fees are prescribed by the rules framed by them under powers and also does not apply to settlement cases under s 105, 106 of the Bengal Tenancy Act.

The Courts Fees Act by enacting ss 4 and 6 prohibits documents specified in the first and second schedules to the Act from being filed, exhibited, recorded or received in any Court of Justice without being properly stamped This means that the documents are to bear proper fees before those are filed, exhibited or recorded in the Courts The documents are to bear court-fee stamps and should not be stamped with non-judicial stamps, and if they are so stamped, they should be deemed unstamped

There is no clear provision in the Court Fees Act as to what would happen in case a document so filed, exhibited or recored in a Court to found to bear insufficient court-fees. S 28, sub-section 1, merely provides that a document will not be of any validity unless it is properly stamped. There is no provision for its rejection forthwith

It should be borne in mind that a document insufficiently stamped is not a nullity—*Faizullah Khan* v. *Mauladad*, 10 Lah 737 (743) P C

The Civil Courts remedy such defects by having recourse to the provisions of Ord. 7, Rule 11, read with S 149 of the Code of Civil Procedure The Code of Civil Procedure enjoins on the Courts to grant time and if the party so ordered to make up the deficiency fail to do so within the time allowed the document in question is to be rejected. The Courts must allow time but the length of the time allowed for compliance with the order is no doubt in the discretion of the Court The Courts may pass the order on discovery of the insufficiency at any stage of the suit The order must be made while the case is pending otherwise the deficiency cannot be recovered as after the disposal of the case the Court is *functus officio*

[The Bengal Amendment Act provides that these may be recovered as a public demand]

As the Court Fees Act is a fiscal enactment and the subject cannot be charged without express provision of the law, the kinds of documents enumerated in the first and the second Schedules should be deemed exhaustive.

The documents exempted from duty are enumerated in s. 19 of the Court Fees Act, but the documents there set out are not

exhaustive Any document not coming within the list of documents in the first and the second Schedules is also exempt from taxation

S 7 indicates the method of computation of fees Each of the paragraph begins with the word suit, but it should not be considered because that word is used, the memoranda of appeal are excluded from the operations of s 7 For instance, in a suit for possession of a revenue paying permanently settled estate, the Court fees are to be calculated at ten times the revenue payable as recorded in the Collector's register The same method of calculation is followed in calculating the fee payable on the memorandum of appeal The amount of *ad valorem* fees is to be ascertained by reference to Sch I, Art 1 of the Court Fees Act which again indicates that the rates of fees prescribed are to be calculated on the value or amount of the subject matter in dispute There the words amount or value of the subject-matter in dispute must mean the same thing as prescribed in s 7 A reference to s 7, Paragraph IV will make this clear There although the word suit is used, the words memorandum of appeal are also used at the end of the paragraph Although in some cases, for example in suits or appeal relating to redemption, the Allahabad and the Madras High Courts have differed from other High Court in demanding *ad valorem* court-fees on the decretal amount in an appeal arising out of a redemption suit They interpret the word "suit" in s 7, as meaning a suit and not an appeal

Sec 7 further provides in paragraphs V (a), (b), (c), VI, VII, VIII, IX, X XI a method of valuation for the purpose of assessing court fees The valuation for the purposes of court-fee is determined in those classes of suits by reference to s 7 and the amount of Court Fees payable is then determined by reference to Sch I, Article 1, and the table of rates (framed in accordance with Sch I, Art 1) and the amount thus ascertained is paid on the plaint or the memorandum of appeal, etc

The question of valuation has been dealt with at length under s 7 in the body of the book

S 7, paragraph I, deals with claims for money which can be ascertained at the time of presenting the plaint These include claims on mortgages, *mesne* profits, promissory notes, compensation and claims for past periodical payments due but not paid such as past claims for maintanance etc

S. 7, paragraph II refers to suits for realization of annuities etc to which a right to obtain relief is to be established and the Act requires that *ad valorem* Court Fees calculated on ten times the annual claim are to be paid.

S. 7, paragraph III refers to movable property having a market value

S. 7, paragraph IV (a) refers to movable property having no market value

Cl (b) of the same paragraph refers to suits for enforcing a right to share in the joint family property. The clause does not apply if there had been a disruption of the joint family.

Cl (c) refers to suits for declaration with a consequential relief (and most of the suits fall under this section)

Cl (d) refers to a suit to allow an injunction.

Cl (e) refers to suits for benefits arising out of land such as easements etc

Cl (f) refers to suits for account but it must be noted that it has been held that merely because books of accounts are to be examined, such examination and determination of the amount in claim based on such examination does not bring a suit for money under this clause

The concluding words of the paragraph allow court-fees to be paid on the valuation by the plaintiff and the plaintiff is required to state that valuation, and on this point all the High Courts are divided as to whether it is the valuation by the plaintiff—whatever that value may be—or a reasonable valuation, the Courts having power to revise the valuation All these cases have been noticed in their proper places under S 7.

The power of Court to revise the valuation is embodied in Ord 7, Rules 10 & 11 of the Code of Civil Procedure and is independent of the Court Fees Act Such power cannot be controlled by any provision of the Court Fees Act Then S 12 of the Court Fees Act empowers a Court to decide every question relating to valuation for the purpose of determining any fee chargeable under Chapter III, which also contains S. 7. It cannot, therefore, be said that the valuation by the plaintiff is the sole criterion of determining the amount of stamp in cases coming within s. 7, para. iv, although in several cases the High Courts in India have held that the valuation by the plaintiff is to be accepted. (See *In the matter of Kali Pado Mukherji*, 34 C.W.N. 870) [The Bengal Amendment Act (VII of 1935) provides for revision of valuation]

It should be further noted that the provisions of s 7, paragraph iv of the Court Fees Act read with s 8 of the Suits Valuation Act do not entitle a plaintiff or an appellant to put one valuation for the purpose of court-fees and another or a higher valuation for the purpose of jurisdiction The valuations must be the same.

S 7, paragraph v deals with recovery of possession of immoveable property. It is mainly divided into permanently settled estates and temporarily settled estates As to the former the court-fees are payable *ad valorem* 10 times the Government

paragraph X (a), (b), (c) and paragraph XI for jurisdiction the court-fees shall be the same

S 8 of the Court Fees Act refers to appeals arising out of Land Acquisition cases Since the amendment of the Land Acquisition Act by Act XIX of 1921 every order is a decree and Sch I, Art 1 of the Court Fees Act applies, and *ad valorem* court-fees are payable on the amount in claim.

In assessing the court-fees a further fact is to be borne in view, *viz*, whether the suit (or appeal) embraces two or more distinct subjects which words have been interpreted to mean distinct causes of action. For example in suing upon two promissory notes or on two mortgages, the duty is to be assessed on the amount due on each (*Vide* s 17). A suit for possession with *mesne profits* form one cause of action

In case of reliefs claimed in the alternative the value of the larger of the reliefs determines the amount of the court-fees payable

The determination of court-fees payable on a memorandum of appeal depends on the fact whether the appeal is from a decree or order

If from a decree then, if the memorandum does not come under any of the Articles in Sch. II of the Court Fees Act, *ad valorem* court-fee is payable

A memornadum of appeal from a decree passed under s 47 of the Code of Civil Procedure, is to be stamped as a memorandum of appeal from order under the Notification of the Government of each Province whereby the fee is reduced to a fee as leviable under Sch II, Art 11.

A memorandum of appeal from an order not having the force of a decree comes within the provisions of Art. 11 of the second Schedule

There are some cases, *viz*, accounts and claims for *mesne profits*, the amount of which cannot be ascertained by the plaintiff at the time of filing the plaint The Code of Civil Procedure allows the plaintiff (*vide* Order 7, Rule 2) to make an approximate valuation and to pay *ad valorem* court-fees thereon After the final decree the balance of the court-fees is demanded by the Court and paid by the successful plaintiff under s. 11 of the Court Fees Act. In case of failure, the claim for the excess amount found to be due is, of course, dismissed

S 12 deals with decisions of questions as to valuation of suits The section enacts that every question relating to valuation in a plaint or memorandum for the purpose of determining the amount of any fee chargeable under Chapter III (please note that s 7 is also within this Chapter), shall be decided by the Court and such decision shall be final as between the parties.

This has been construed to mean that the decision is final as to amount but not as to category under which the particular plaint or memorandum of appeal falls

The second sub-section expressly authorizes the Court of appeal, reference or revision, to require a party when it considers such a question has been determined to the detriment of revenue to make up the insufficiency and in case of failure to pay, the provisions of s 10 shall apply *i e*, the suit is to be dismissed without option

In this connection it is proper to consider the provisions of s 28 which empowers a higher Court to realize court-fees on a document which have been through mistake or inadvertence filed or used in any office without being properly stamped. Then the higher Court can demand the insufficient court-fee to be paid.

But deficit court-fees can only be realized by a Court while disposed of [But see the B C Act VII of 1935 who allows levy of such court-fees as a public demand]

Refunds —So far I have indicated the sections for the realization of court-fees I now proceed to consider the provisions for refund of court-fees The main section for refund is s 13 of the Court Fees Act This section authorizes refund of court-fees in cases where the suit was disposed of on a preliminary point and such decision was reversed on appeal; in such cases the appellate Court is to order refund of court-fees, paid on the memorandum of appeal presented to the appeal Court. The reason possibly being that it is not fair to charge court-fees which had to be paid owing to the mistake of a Court Court-fees are also refunded when the plaintiff or the appellant through mistake has overpaid the court-fees on a plaint or a memorandum This is done under the inherent powers of Court to do justice under s. 151 of the Code of Civil Procedure. The reason possibly being that the Government is not entitled to it under the Court Fees Act.

Refund of fees are also made where too high a court-fee has been paid in Probates or Letters of Administration or Certificate of Administration under s. 19A of the Court Fees Act and in the manner provided by that section

S. 14 authorizes a Court to grant refunds of court-fees on applications for review presented on or after the 90th day of so much of the fees paid on the application as exceeds the fee which would have been payable had it been presented before the 90th day, *i e.*, up to half the amount of court-fees payable.

Under s 15 refunds are allowed on an application for rev' when the Court modifies its decision on the ground of mis '

Refunds of court-fees cannot be allowed when the case is compromised or remanded on grounds other than those provided in Or 41, Rule 23 of the Code of Civil Procedure and where the case has been remanded in part, the appellant is only entitled to a refund of the corresponding portion. A refund order to be made by an appeal Court under Ord 41, Rule 23, C P C will have to be paid back if on a further appeal the higher Court reverses the remanding order of the lower appellate Court.

Refunds may be made on a rejection of plaint as insufficiently stamped

Sale fees and other fees are refunded if the sale be set aside by Court but not in cases where the sale is set aside on account of fraud on th part of the decree-holder, and these refunds are made under rules framed by each High Court.

In all cases of refund the amount of money for the full fee is to be paid back

Distinct Subjects—S 17 deals with suits embracing two or more distinct subjects in the plaint or memorandum of appeal, the words distinct subjects have been construed to mean distinct causes of action, but it should not be construed to mean that whenever two or more claims are coupled together the fees are to be calculated separately The cases where the fees are to be calculated separately have been indicated under s 17

Sec 19 deals with documents which are exempted from taxation, but this is by no means an exhaustive list It should be noted that ss. 4 and 6 make documents mentioned in Schedules I and II chargeable with court-fees, therefore documents not included in these Schedules are not chargeable with fees although these may not be included in s 19.

Duties on probates ,etc.

Chapter IIIA *i.e*, Secs. 19A, 19B, 19C, 19D, 19E, 19F, 19G, 19H, 19I, 19J, relates to probate proceedings and the enquiry as to valuation of properties of the deceased including penalties to be paid in the case of under-valuation or of neglect to pay soon after the discovery of under-valuation

Sch. I, Art. 11 prescribes the duty payable on a probate or letter of administration.

Criminal Courts—S 18 indicates the fees payable on complaints before Criminal Courts.

When a complaint is filed before a Criminal Court the application or petition is to bear stamp under Schedule II, Art. 2 (b) of the Court Fees Act.

S. 31 which is at present S 546A of the Code of Criminal Procedure, authorizes a Criminal Court or a Court of Criminal

appeal to pass orders for payment of compensation to the complainant as regards fees paid by him in addition to other penalties imposed.

Fees for serving and executing process issued by Criminal Courts, in case of offences other than offences for which a police officer may arrest without a warrant are governed by rules made by the High Court under s 20 (ii) of the Court Fees Act Such rules have the force of law on being published in the Local Official Gazette

Revenue Courts—The Court Fees Act is not applicable to applications under s 105, B. T Act but the fees are governed by notification issued by the Government

The applications to Revenue Courts are to bear fees mentioned in Sch II, Art 1, cl (a) and (b) of the Court Fees Act.

Art 17, clause (i) of the second Schedule applies to summary orders of Revenue Courts

Fees for Revenue Courts for serving and executing processes are governed by rules framed by High Courts which rules on being published in the Local Official Gazette have the force of law.

Process fees—S 20 deals with fees on processes issued by Civil Courts The processes include serving fees, sale fees, etc.

Ss 22 and 23 deals with number of peons to be employed.

Collection of fees—S. 25 requires that all the fees are to be paid by court-fee stamps.

Use of stamps—Ss 26 and 27 empowers the Local Government to frame rules as to the number of adhesive and impressed stamps to be used in denoting duty and also to frame rules as to the supply and renewal of stamps and keeping accounts of stamps The number of stamps to be used is governed by rules under these sections.

Fees not paid in the lower Courts—S. 28 refers to realization of fees on documents filed in the lower Court which was through mistake or inadvertence filed or exhibited in the lower Courts with insufficient court-fees. S. 12, cl. ii also empowers the higher Courts to realise deficiency in the lower Courts.

S. 29 refers to stamps on amended documents in cases specified

Cancellation and sale of stamp—S. 30 prefers to cancellation of stamps

S 34 empowers the Local Government to make rules regulating the sale of stamps

S. 35 authorizes the Local Government to reduce the Court fees payable on a document.Rules as to reduction and remission are framed under this section and set out in the Appendices

The Schedules are divided into two parts one for *ad valorem* and the other for fixed fees It is important to remember that heading of a group of sections do not control the body of the secti [illegible] es payable on applications for [illegible] irrespective of the Schedule [illegible] estion is to be charged.

The first Schedule contains fees on applications for review, fees payable on applications to High Courts at Lahore and Rangoon and deals with *ad valorem* fees

The second Schedule prescribes fees payable on application to Civil, Criminal and Revenue Courts to and various public offices, application and appeal to sue as pauper and to plaints in special Courts, bailbonds and other instruments of obligation. It also deals with applications and appeals under the Divorce Acts It prescribes fees (Art 11) on appeals from orders to specified Courts or offices and provides for fees on caveat. It also enacts that certain classes of suits or memoranda of appeal are to bear fixed fees

Questions under Sch II, paragraph 17 and Ord. 36, rule 1, are dealt with under Art 18 and 19 of the 2nd Schedule to the Court Fees Act.

STATEMENT OF REPEALS AND AMENDMENTS OF INDIA COUNCIL UP TO 1935.

Section 2, repealed	Act XIV of 1870, Schedule.
Section 2, added	Act X of 1901, s 2
Sections 2 and 3, amended	Act XXIV of 1917, s 2 and First Schedule
Section 3, amended	Act XII of 1891
Section 4 amended	Act XIX of 1922, s. 2
Section 7, amended	Act XII of 1891 Act VI of 1905, s 2
Section 10, amended	Act XII of 1891
Section 15, amended	Act XX of 1870, s. 1
Section 16, repealed	Act V of 1908
Section 19, Clause iv, repealed	Act XIII of 1889, Schedule.
Section 19, Clause viii, amended	Act VIII of 1889
Section 19, Clause xxiv, amended	Act XV of 1872
Sections 19A to 19H, inserted	Act XIII of 1875, s 2
Section 19A, amended	Act X of 1901
Section 19C, amended	Act XII of 1891.
Section 19E, amended	Act X of 1901, s 3
Section 19G, amended	Act XII of 1891
Section 19H to 19 K, added	Act XI of 1899, s 2.
Section 19H, amended	Act X of 1901, s 3
Sections 20 and 23, amended	Act XVII of 1887, Schedule
Sections 20, 22 and 23, amended	Act XXXVIII of 1920, s 2 and Sch I
Section 24, repealed	Act XII of 1891.
Section 26, amended	Act XXXVIII of 1920, s 2 and Schedule I
Section 31, repealed	Act XVIII of 1923, s 163
Section 32,, repealed	Act XII of 1891
Section 34, inserted	Act XII of 1891
Section 35, amended	Act XXXVIII of 1920, s 2 and Schedule I
Schedule I, Art 1, amended	Act XX of 1870 Act VIII of 1871. Act VII of 1889 Act VIII of 1890 Act XII of 1891 Act VI of 1900. Act V of 1908
Schedule I, Art. 12A	Act VII of 1910
Schedule I, Art 13	Re-enacted by Punjab Act VII 1922.
Schedule I, Art 14, amended	Bur. Act III of 1926
Schedule I, Art. 15, repealed	Act XI of 1923.
Schedule II, amended	Act VI of 1889
Schedule II, Art. 1A	Act XIV of 1911.
Schedule II, Art. 6	Substituted by Act XVII of 1914 and Act VII of 1914
Schedule II, Arts. 8 & 9	Repealed by Act XII of 1891.
Schedule II, Art. 11	Amended by Act V of 1908 Act XVII of 1914
Schedule II, Art. 15	Repealed by Act V of 1908
Schedule II, Art. 19	Amended by Act V of 1908.
Schedule III, repealed	Act XIV of 1870.
Schedule III, inserted	Act XI of 1899.

Table showing Amendment made to Sections of the Court Fees Act, 1870, by the Provincial Amedmets Acts of 1922 to 1935.

Sections of Act VII of 1870	Ben Act IV of 1922, XI of 1935 and VII of 1935	B & O Act I of 1922.	Bom. Act II of 1932 (as amended)
Sec 4		Amended	
,, 5			
,, 6	Amended	Amended	Amended
,, 7			
Secs 9 and 10	Repealed		
Sec. 11	Amended		
,, 12	Amended		
,, 17	Amended	Amended	
,, 18	Amended	Amended	
,, 19	Amended	Amended	
Schedule I—			
,, Art. 1	Amended	Amended	Amended
,, ,, 6	Amended	Amended	
,, ,, 7		Amended	
,, ,, 8		Amended	Amended
,, ,, 9		Amended	
,, ,, 11	Amended	Amended	Amended
,, ,, 12	Amended	Amended	Amended
,, ,, 12A			Amended
,, ,, 13			
Schedule II—			
,, Art. 1	Amended	Amended	Amended
,, ,, 1A		Amended	
,, ,, 4			
,, ,, 5			
,, ,, 6		Amended	Amended
,, ,, 7		Amended	Amended
,, ,, 10	Amended	Amended	
,, ,, 11	Amended	Amended	
,, ,, 12	Amended	Amended	Amended
,, ,, 14		Amended	Amended
,, ,, 17	Amended	Amended	Amended
,, ,, 18		Amended	Amended
,, ,, 19		Amended	Amended
,, ,, 20		Amended	Amended
,, ,, 21	New Article No 22 inserted.	Amended	Amended

Table showing Amendment made to Sections of the Court Fees Acts, 1870, by the Provincial Amendments Act of 1922 to 1935.

C. P Act XVI of 1935	Mad Act V of 1922	Punjab Act VIII of 1922 (as amended)	U. P. Act II of 1922 (as amended up-to 1935.)
		Amended	
	Amended		
	Amended		
	Amended		Amended
Amended	Amended	Amended	Amended
	Amended		
Amended	Amended	Amended	Amended
Amended			Amended
Amended			Amended
Amended	Amended		Amended
Amended	Amended		Amended
		Amended	
Amended	Amended	Amended	Amended
			Amended
			Amended
		Amended	Amended
		Amended	Amended
Amended		Amended	Amended
Amended	Amended	Amended	Amended
	Amended	Amended	Amended
	Amended	Amended	Amended
Amended			Amended
Amended	Amended		Amended
Amended	Amended		Amended
	Amended		Amended
			Amended
		New Article No. 22 inserted.	New Article No. 22 inserted.

LIST OF ABBREVIATIONS.

Agra	Agra High Court Reports
All I R. or A I. R.	All India Reporter.
All or A	Indian Law Reports, Allahabad Series.
All L J or A L. J	Allahabad Law Journal
All W N or A W. N	Allahabad Weekly Notes
B L R	The Bengal Law Reports
Bom.	Indian Law Reports, Bombay Series.
Bom H C	Bombay High Court Reports
Bom L R	Bombay Law Reporter
Bur. L T.	Burma Law Times
Cal	Indian Law Reports, Calcutta Series.
C L J	The Calcutta Law Journal
C L. R.	The Calcutta Law Reports
C W N	The Calcutta Weekly Notes
Dist	*Distinguished*
F B.	Full Bench.
I A	Law Reports, Indian Appeals
I C or Ind Cas	Indian Cases
I R	Indian Reports
L B R	Lower Burma Rulings
L L J	Lahore Law Journal
L W	Law Weekly, Madras
Lahore or Lah	Indian Law Reports, Lahore Series
Luck	Indian Law Reports, Lucknow Series.
Mad	Indian Law Reports, Madras Series.
M H C R	Madras High Court Reports
M I A	Moore's Indian Appeals
M L J	Madras Law Journal
M L. T	Madras Law Times
M W. N	Madras Weekly Notes
N L R	Nagpore Law Reports
O C.	Oudh Cases
O L J	Oudh Law Journal
O W. N.	Oudh Weekly Notes
Pat.	Indian Law Reports, Patna Series
P. C.	Privy Council
P. J.	Prited Judgment of the Bombay High Court
39 P. R 1907	Punjab Record, No 39 of 1907
119 P. L R. 1907	Punjab Law Reporter, No 119 of 1907.
61 P. W. R. 1907	Punjab Weekly Reporter, No. 61 of 1907
Pat. C. W. N.	Patna Supplement to the Calcutta Weekly Notes or Patna High Court Cases
Pat. L J. or P. L. J.	Patna Law Journal
Pat. L. T. or P. L T.	Patna Law Times
Pat. L. W. or P. L. W.	Patna Law Weekly.
Ran or Rang.	Indian Law Reports, Rangoon Series.
Ref.	*Referred to*
S L. R.	Sindh Law Reports
U B R.	Upper Burma Rulings
W. R.	Sutherland's Weekly Reporter.

TABLE OF CASES.

The numerical figures refer to pages.

A

B

C

E

F

G

H

I

J

c

L

M

O

P

U

V

W

Y

Z

THE COURT FEES ACT, 1870.

CHAPTER I

CONTENTS.

Preliminary.

CHAPTER II.

Fees in the High Courts and in the Courts of Small Causes at the Presidency-towns

CHAPTER III

Fees in other Courts and in Public Offices

CHAPTER IIIA

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION

SUITS VALUATION ACT—(VII OF 1887).

CONTENTS.

PART I.

SUIT RELATING TO LAND.

PART II.

OTHER SUITS

PART III

SUPPLEMENTAL PROVISIONS

SUPPLEMENT

TO

THE COURT FEES ACT, 1870

AND

THE SUITS VALUATION ACT, 1887

AS AMENDED UPTO APRIL 1938

THE GOVERNMENT OF INDIA (ADAPTATION OF INDIAN LAWS) ORDER, 1937.

Came into force from first day of April 1937.

THE COURT-FEES ACT, 1870.

(VII of 1870).

After section 1 *insert*—

"1A In this Act 'the Appropriate Government' means, in relation to fees or stamps relating to documents presented or to be presented before any officer serving under the Central Government, that Government, and in relation to any other fees or stamps, the Provincial Government."

"Definition of Appropriate Government.'

Omit section 2, as in force elsewhere than in Bengal.

Section 3.—*After* "the Government of India Act, 1915," *insert* "or section 229 of the Government of India Act, 1935"

Sections 26, 27, 34 and 35.—*For* "Local Government" *substitute* "Appropriate Government."

Schedule I—*Omit* Entry 14.

THE COURT-FEES (BENGAL AMENDMENT) ACT, 1935.

(Bengal IV of 1935).

Section 8.—In section 8 (f) *for* "by Government" *substitute* "by the Provincial Government."

Section 13—*For* "by Government servants or of" *substitute* "servants of the Crown or".

THE UNITED PROVINCES COURT-FEES AMENDMENT ACT, 1933

(U. P. III of 1933).

Section 1.—*Omit* "for the time being".

THE SUITS VALUATION ACT, 1887.

(VII of 1887).

Section 2—*For* "Governor General in Council" *substitute* "Provincial Government."

Section 3.—*Omit* "subject to the control of the Governor General in Council".

NEW

REDUCTIONS AND REMISSIONS (FOR BENGAL) UNDER SECTION 35 OF THE COURT-FEES ACT, 1870 (VII OF 1870).

NOTIFICATIONS.

No 2332-J, 4th March 1938.—Under sub-section (1) of section 35 of the Court-fees Act, 1870 (VII of 1870), and in supersession of all previous notifications under that section, it is hereby notified that in exercise of the power to reduce or remit in the whole of Bengal or in any part thereof all or any of the fees mentioned in Schedules I and II to the said Act, the Governor is pleased to make the reductions and remissions hereinafter set forth, namely:—

(1) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded;

(2) to remit the fees chargeable on—

(*a*) copies of village settlement-records furnished to landholders and cultivators during the currency or at the termination of settlement operations,

(*b*) lists of fields extracted from village settlement-records for the purpose of being filed with petitions of plaint in Settlement Courts:

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement-records (other than lists of fields) extracted as aforesaid, which may be filed in any Court or office;

(3) to direct that the fee chargeable on appeals from orders under section 47 and section 141 of the Code of Civil Procedure, 1908 (Act V of 1908), shall be limited to the amounts chargeable under article 11 of Schedule II;

(4) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants;

(5) to remit the fees chargeable under articles 6, 7 and 9 of Schedule I on copies furnished by Civil or Criminal Courts or Revenue Courts or offices for the private use of persons applying for them:

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer,

(6) to remit the fees chargeable, under paragraph 4 of clause (*a*) and paragraph 2 of clause (*b*) of article 1 of Schedule II, on applications for orders for the payment of deposits in cases in which the original deposit does not exceed Rs. 25 in amount:

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application,

(7) to remit the fees chargeable on applications for loans under the Land Improvement Loans Act, 1883 (XIX of 1883); or the Agriculturists' Loans Act, 1884 (XII of 1884),

(8) to remit the fees chargeable on the following documents, namely —

(*a*) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1898 (Act V of 1898), or of a translation thereof, when the copy is given to an accused person,

(*b*) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person,

(*c*) copy or translation of a judgment in a case other than a summons case, and copy of the heads of the Judge's charge to the jury, when the copy or translation is given under section 371 of the said Code to an accused person,

(*d*) copy or translation of the judgment in a summons case, when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail,

(*e*) copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid,

(*f*) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which, on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment,

(g) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court,

(h) copies of all documents which any such Advocate, Pleader or other person is required to take is connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings,

(i) copies of judgments or depositions required by officers of the Police Department in the course of their duties;

(9) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office;

(10) to direct that, when a part of an estate paying annual revenue to the Provincial Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional share of that part shall, for the purpose of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share;

(11) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification;

(12) to direct that no court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine the refund of which has been ordered by competent authority;

(13) to remit the fees chargeable on applications for copies of documents detailed in clauses (2) and (8) *supra;*

(14) to remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913 (VII of 1913), provided that the said share or interest was registered in a branch register kept in the United Kingdom in accordance with the provisions of sections 41 and 42 of the said Act, and that such member was at the date of his decease domiciled elsewhere than in India;

(15) to remit the fees chargeable on applications presented to officers of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed;

(16) to remit the fee chargeable on applications and petitions presented to a Collector or any Revenue Officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural D- ment of the Province;

(17) to remit the fees payable under Schelude II upon applications for the grant or renewal of licenses or duplicates under the Indian Arms Rules, 1924, in respect of which a fee is payable under those rules;

(18) to remit the fees chargeable on applications for the grant of licenses of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules, 1914, to possess gun powder, other explosives or detonators required *bona fide* for blasting purposes;

(19) to remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884),

(20) to remit the fees chargeable on copies of decrees of Civil or Revenue Courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any Court in Bengal for execution in pursuance of the provisions of section 44 of the Code of Civil Procedure, 1908 (Act V of 1908),

(21) to direct that the proper fee to be charged upon an application to deposit in any Court, rent not exceeding the sum of fifteen rupees, shall be as follows:—

If the amount deposited does not exceed Rs. 1-4-0—1 anna.

If the amount deposited exceeds Rs. 1-4-0 but does not exceed Rs. 2-8-0—2 annas.

If the amount deposited exceeds Rs. 2-8-0 but does not exceed Rs. 5—3annas.

If the amount deposited exceeds Rs. 5 but does not exceed Rs. 10 —6 annas.

If the amount deposited exceeds Rs 10 but does not exceed Rs. 15 —9 annas

Provided that no fee shall be chargeable on an application to deposit rent in respect of which a fee is chargeable under any rule framed under sub-section (2) of section 61 of the Bengal Tenancy Act, 1885 (VIII of 1885),

(22) to remit the fees chargeable on application by ryots in the Rajshahi district for licenses to cultivate the hemp plant;

(23) to remit the fees chargeable on applications or petitions of objection referring to any entry made or proposed to be made in a draft record-of-rights prepared under Chapter X of the Bengal Tenancy Act, 1885 (VIII of 1885), provided that such applications or petitions are presented before the publication of such draft record under sub-section (1) of section 103A of the said Act;

(24) to remit the fees chargeable on certified copies of entries in records-of-rights furnished in accordance with any rules for the time being in force under the Bengal Tenancy Act, 1885 (VIII of 1885), after the final publication of such records-of-rights under sub-section (2) of section 103A of that Act;

(25) to remit the fees chargeable on applications for mutation of names in all Government estates,

(26) to remit the fees chargeable on copies of documents furnished by a District Magistrate to a Pleader appointed by the Court to defend a pauper accused of murder,

(27) to reduce the fees chargeable under clause (*iii*) of article 17 of Schedule II on plaints relating to suits instituted under section 106 of the Bengal Tenancy Act, 1885 (VIII of 1885), to the amount of an *ad valorem* fee chargeable under article 1 of Schedule I, in cases where the amount of such fee would be less than Rs. 20;

(28) to direct that the proper count-fees chargeable on certified copies of entries in a record-of-rights of a village or a portion thereof maintained under the Bengal Tenancy Act, 1885, shall be as follows:—

If the number of words does not exceed 360—8 annas.

If the number of words exceeds 360 but does not exceed 720—Re 1

If the number of words exceeds 720—Rs 1-8,

(29) to remit court-fees payable in any proceeding before the manager appointed under the Murshidabad Estate Administration Act, 1933 (XXIII of 1933), provided that every Vakalatnama to be filed in such proceeding shall be stamped with a court-fee stamp of Re. 1;

(30) to remit the fees payable on applications for permit in Form No 56 of the Bengal Excise and Salt Department for supply of rectified spirit or absolute alcohol duty free;

(31) to remit the fees leviable under articles 11 and 12 of Schedule I on the property of (*i*) any persons subject to the Naval Discipline Act (29 and 30 Vict. c. 109), the Army Act (44 and 45 Vict c. 58), the Air Force Act (7 and 8 Geo. 5, c. 51), or the Indian Army Act, 1911 (VII of 1911), who is killed while on active service or on service which is of a warlike nature or involves the same risk as active service, or dies from wounds inflicted, accidents occurring or disease contracted while on such service, and (*ii*) any person being a servant of the Crown, civil or military, who dies from wounds or injuries intentionally inflicted while in actual performance of his official duties or in consequence of these duties, as follows:—

Remissions.

(*a*) Where the amount or value of property, in respect of which the grant of probate or letter of administration is made, or which is specified in the certificate under the Indian Succession Act, 1925, does not exceed Rs 50,000, the whole of the fees leviable in respect of property,

(*b*) where the said amount or value exceeds Rs. 50,000, the of the said fees in respect of the first Rs. 50,000;

(32) to remit the fees chargeable on the applications of

lords or their agents or of common managers or common agents of joint landlords, or on the joint applications of co-sharer landlords, without any common agent or manager, for the payment of the transfer fee, as defined in rule 24 of the rules under the Bengal Tenancy Act, 1885 (VIII of 1885), published under notification No 5462L.R., dated the 26th March 1929, at pages 549-92, Part I of the *Calcutta Gazette* of the 25th idem, which is payable to them, in accordance with the provisions of that Act;

(33) to remit the fees chargeable on the applications of co-sharer landlords under the first proviso to sub-section (3) of section 26C of the Bengal Tenancy Act, 1885 (VIII of 1885), for the payment of the proportionate share of the landlord's transfer fee which is payable to them under the said sub-section,

(34) to remit the fee mentioned in Schedule II chargeable in respect of applications from tobacco vendors for a license under the Bengal Tobacco (Sales Licensing) Act, 1935 (XIV of 1935), and the rules framed thereunder,

(35) to reduce the fee chargeable under article 1 (*b*) of Schedule II on an application to deposit arrears of revenue in the Court of the Collector after the latest day of payment fixed under section 3 of Act XI of 1859 to annas 4 only when the amount stated in the application is below Rs 50,

(36) to reduce to 4 annas the fee of 12 annas chargeable under paragraph 2 of article 1 (*b*) of Schedule II in respect of applications for information when presented to a Civil, Criminal or Revenue Court;

(37) to reduce to 2 annas the fee chargeable under article 1 (*b*) of Schedule II on application for conversion of an uncertified copy into a certified one

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Published in the "Calcutta Gazette," *dated the 3rd February 1938.*

JUDICIAL AND LEGISLATIVE DEPARTMENTS

No 661-J, 25th January 1938.—The orders contained in Notification No. 3381-J, dated the 31st March 1929, regarding the remission of fees mentioned in the First Schedule to the Court Fees Act, 1870 (VII of 1870), chargeable in respect of copies of documents required by public officers for filing before civil courts in suits in which the Government is a party are hereby cancelled

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ADDENDA.

BENGAL ACT I OF 1936.

THE COURT-FEES (BENGAL THIRD AMENDMENT) ACT, 1935.

[PUBLISHED IN THE CALCUTTA GAZETTE OF THE 6TH FEBRUARY, 1936.]

An Act to amend the Court-fees (Bengal Amendment) Act, 1935.

WHEREAS it is expedient to amend the Court-fees (Bengal Amendment) Act, 1935, in the manner hereinafter appearing: Ben Act VII of 1935.

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act; 5 & 6 Geo. V, c. 61, 6 & 7 Geo. V, c. 37, 9 & 10 Geo. V, c. 101.

It is hereby enacted as follows:—

Short title

1. This Act may be called the Court-fees (Bengal Third Amendment) Act, 1935.

Amendment of section 6 of Bengal Act VII of 1935.

2. In sub-section (2) of section 6 of the Court-fees (Bengal Amendment) Act, 1935 (hereinafter referred to as the said Act), in new sub-section (2), for the words beginning with "subject to the following conditions" and ending with "fixed by the Court" the following shall be substituted, namely:—

"Subject to the condition that the plaint or memorandum of appeal shall be rejected unless the plaintiff or appellant, as the case may be, pay to the Court within a

time to be fixed by the Court such reasonable sum on account of court-fees as the Court may direct."

Amendment of section 8.

3. In section 8 of the said Act, in sub-section (1) of new section 8B, for the words "as soon as may be after the registration of the plaint or memorandum of appeal" the following shall be substituted, namely:—

"on the date fixed for the appearance of the opposite party or as soon as may be thereafter"

C. G. HOOPER,

Secy. to the Govt. of Bengal (Offg.)

NOTIFICATIONS.

[*Published in the Calcutta Gazette, dated the 12th March 1936, Part I, pages 501 ff*]

No. 1091-J.—7th March 1936—In exercise of the power conferred by sub-section (3) of section 1 of the Court-fees (Bengal Amendment) Act, 1935 (Bengal Act VII of 1935), the Governor in Council is pleased to appoint the 14th April 1936 as the date on which the whole of the said Act as amended by the Court-fees (Bengal Third Amendment) Act, 1935 (Bengal Act I of 1936), shall come into force.

No 2022-J.—7th March 1936—In exercise of the power conferred by section 8A of the Court-fees Act, 1870 (VII of 1870), as amended by the Court-fees (Bengal Amendment) Act, 1935 (Bengal Act VII of 1935), the Governor in Council is pleased to prescribe that the statement of particulars of the subject matter of a suit and the plaintiff's own valuation thereof referred to in the said section shall contain the particulars mentioned below and shall be in the form annexed hereto:—

(I) In all cases the plaintiff shall state any information, in addition to that appearing in the plaint or in the statement furnished in accordance with the requirements of this notification, which he considers material to his own valuation. Sufficient particulars shall always be given to show how the valuations havebeen calculated. Where the statement of particulars or of the valuation is contained in the plaint, it is not necessary to file a separate statement.

(II) In the case of suits mentioned in column (B) below, in respect of which ad valorem fees under the provisions of the Court-fees Act, 1870, mentioned in column (A) below are payable the particulars mentioned in column (C) below shall be as stated:—

Reference to sections, paragraphs and clauses of the Court-fees Act 1870	Nature of Suit. (B)	Particulars to be stated. (C)
1 Section 7 paragraph (iii).	Where the suit is for movable property (other than money) having a market-value.	*Vide* paragraph (I).
2 Section 7, paragraph ([illegible]), clause (*a*).	Where the suit is for movable property having no market-value.	If the suit relates to a document relating to title, the consideration for which the document was executed and the extent to which it affects the plaintiff's interest.
3. Section 7, paragraph (iv), clause (*c*).	Where the suit is for a declaratory decree in respect of a property and consequential relief:—	(*1*) The items of property in respect of which the declaration is sought and their market-value, item by item.
	if the relief sought is in respect of a decree for money;	(*2*) The amount for which the decree was passed.
	if the relief sought is in respect of a decree for property other than money, or if the relief sought is in respect of a document relating to title of a property; or if the relief sought is to set aside an auction or private sale of a property;	(*3*) (*i*) if the property is movable property, the particulars and the market-value of the property in detail, or (*ii*) if the property is immovable property the same particulars in regard to the property as are required in the case of a suit for possession thereof.
	if the relief sought is in respect of a mortgage deed.	(*4*) The amount of the claim under the mortgage.
4 Section 7, paragraph (iv), clause (*d*).	Where the suit is to obtain an injunction.	*See* paragraph (I).
5 Section 7, paragraph (iv), clause (*e*).	Where the suit is for easements.	*See* paragraph (I).
6 Section 7, paragraph (v).	Where the suit is for the possession of land buildings or gardens.	(*1*) The amount of revenue payable annually to Government or the

Reference to sections, paragraphs and clauses of the Court-fees Act, 1870 (A)	Nature of Suit. (B)	Particulars to be stated. (C)
		amount of rent payable annually to the superior landlord for the property in dispute. (2) The area of the land sublet to tenants and the area held khas (3) The total rents receivable annually by the proprietor of the interest claimed,— (i) as recorded in the record-of-rights, (ii) as subsequently altered, (iii) which has not been entered in the record-of-rights, e g, new settlements rents of buildings, etc. (4) The classifications of the khas lands, and the gross profits thereon in the year. (5) Particulars of hats, ghats, fisheries or any other "Sairat", i.e., areas and gross profits thereon in the year. (6) The cost of collection or management or both in the year; details in respect of the items in (3), (4) and (5) should be given separately where available. (7) Nett profits in the year; separately in respect of the items in (3), (4) and (5) where details of costs are given separately in (6). (8) The market-value of the property. (9) In the case of a building in addition to

Reference to sections, paragraphs and clauses of the Court-fees Act, 1870 (A)	Nature of Suit. (B)	Particulars to be stated. (C)
		such of the above particulars as are appropriate:— (*i*) if the building is within the limits of a municipality, the municipal valuation of the building; (*ii*) if the building is outside the limits of a municipality,— (*a*) the area occupied by the building itself, (*b*) the area occupied by the building together with the area of the compound attached thereto, and (*c*) the materials with which the building was constructed
		(*10*) In the case of a garden, in addition to such of the above particulars as are appropriate, if the garden is within the limits of a municipality, the municipal valuation of the garden.
		Explanation.—In this item (*i*) unless there is anything repugnant in the subject or context, "year" means the year next before the date of presenting the plaint, (*ii*) where areas are required to be stated such areas shall be stated in acres and decimals of an acre.
7. Section 7, paragraph (*vi*).	Where the suit is to enforce a right of pre-	The same particulars as in item (6) above.

Reference to sections, paragraphs and clauses of the Court-fees Act, 1870 (A)	Nature of Suit (B)	Particulars to be stated. (C)
	emption in respect of a land, building or garden	
8. Section 7, paragraph (viA)	Where the suit is for partition and separate possession of a share of joint family property or of joint property or to enforce a right to a share in any property on the ground that it is joint family property or joint property.	The same particulars as in item 6 above in respect of the share for which the suit is instituted.
9. Section 7, paragraph (x), clause (d).	Where the suit is for specific performance of an award.	The same particulars of the property in dispute as would be required if the suit were one for the same relief as is given by the award

Form of statement of particulars.

(Section 8A of the Court-fees Act, 1870.)

In the Court of...............

Suit No.....of........

...., Plaintiff

against

......................, Defendant.

Statement of particulars of the subject-matter of the suit and of the plaintiff's own valuation thereof:—

1. That the above suit is for*...................... and an ad valorem fee is payable in respect of the same under section .... of the Court-fees Act, 1870.

2. That the plaintiff begs to state the following parti which are not contained in his plaint, of the subject the suit and of his own valuation thereof (in addition

particulars required under Order VII of the First Schedule to the Code of Civil Procedure, 1908):—

† ... ...

* Here state the nature of the suit.

† Here state the particulars in narrative form with details in separate sub paragraphs where necessary.

Verification

(In like manner as a plaint is required to be verified).

N B—In all cases the plaintiff shall state any information which he considers material to his own valuation. Sufficient particulars shall always be given to show how the valuation has been calculated.

T. ROXBURGH,

Secy. to the Govt. of Bengal (*Offg.*).

particulars required under Order VII of the First Schedule to the Code of Civil Procedure, 1908) :—

†...

* Here state the nature of the suit.

† Here state the particulars in narrative form with details in separate sub paragraphs where necessary.

Verification.

(In like manner as a plaint is required to be verified).

N B—In all cases the plaintiff shall state any information which he considers material to his own valuation. Sufficient particulars shall always be given to show how the valuation has been calculated.

T. ROXBURGH,

Secy. to the Govt. of Bengal (*Offg.*).

THE COURT FEES ACT.

(Act No. VII of 1870).

[11th March, 1870].

[As modified up to June, 1935.]

CHAPTER I.

PRELIMINARY.

Short title — **1.** This Act may be called the Court Fees Act, 1870.

Extent of Act — It extends to the whole of British India;

Commencement of Act — And it shall come into force on the first day of April, 1870.

NOTES.

Local Amendments.—This Act has been amended in Bengal by B. C. Acts IV and II of 1922 and Acts VII and XI of 1935; in Bihar and Orissa by B and O Act I of 1922; in Bombay by Bombay Act II of 1932; in Madras by Madras Act V of 1922; in the Punjab by the Punjab Courts Act, 1884 (18 of 1884), s. 71, Punjab and N. W. Code and Punjab Act VII of 1922 as amended by Punjab Acts I and VI of 1926; in Assam by the Assam Act III of 1932; in the U. P. by the U. P. Act III of 1932 and also in C. P. S 4 was amended by Act XIX of 1922

The Act has been amended in Upper Burma by the Upper Burma Civil Courts Regulation, 1896 (I of 1896), s 36 as amended by the Upper Burma Civil Courts (Amendmen Regulation, 1903 (5 of 1903), Bur. Code; in Lower Burma

the Lower Burma Courts Act, 1900 (6 of 1900), s. 47, Burma Acts XI of 1922 and III of 1926.

The power to amend for each Province has been provided by the Devolution Act XXXVIII of 1920.

Preamble.—This Act has no preamble whereby its purposes can be ascertained, *Gavaranga* v. *Batakrishna*, 32 Mad 305: 6 M L T 129 19 M L J 340: 4 I C 503.

Objects and Reasons—For the Statement of Objects and Reasons, see Gazette of India, 1869, Pt V, p 57; and for Proceedings in Council, see *ibid*, 1869, Supplement, pp. 1179 and 1452, *Ibid*, 1870, Supplement, pp 52, 378, 421, 427, and 434

Object—"The Court Fees Act, 1870, was, as its name imports, an Act primarily passed for the purpose of prescribing the fees which are to be paid in respect of documents to be used in Courts It also provides in the schedules for the stamps to be used in certain offices other than offices of Courts of Justice." *Balkaran Rai* v. *Gobindanath Tewary*, 12 All 129 F.B.: 10 A W N 39

The object of the Act is to lay down rules for the collection of one form of taxation, and this is regarded to be the scope of the enactment, *Muhammad Salim* v. *Nabian Bibi*, 8 All. 282 (289).

"The Courts Fees Act was passed not to arm a litigant with a weapon of technicality against his opponent, but to secure revenue for the benefit of the state This is evident from the character of the Act, and is brought out by section 12, which makes the decision of the first Court as to value final as between the parties and enables the Court of appeal to correct any error as to this, only where the first Court decided to the detriment of revenue," *Rachappa Subrao* v. *Sidappa Venkat Rao*, P.C., 43 Bom. 507: 24 C.W.N. 33. 29 C.L.J. 452: 50 Ind Cas. 280: 21 Bom L.R. 489: 17 A.L.J. 418: 36 M L J. 437. "The Court Fees Act is essentially a fiscal enactment. Its primary object

ect," *Chandra-*
(71): 49 Ind.
C.W.N. 1129:
R. 787 (Cal.).

The Court Fees Act was passed not to arm a litigant with a weapon of technicality against his opponent but to secure revenue for the benefit of the State, *Mahomed Elliyas* v. *Rahima Bebee*, 56 M L J. 302: 29 L.W. 42: 114 I.C. 842: 1929 A I.R. 191 (Mad.).

Scope.—"That Act not only prescribes fees, but provides how these fees are to be ascertained, how questions as to the

sufficiency of fees on documents so far as Courts are concerned, are to be determined, and the conditions under which only the documents in the First and Second Schedules to the Act may be received, filed, registered or used, as the case may be, in Courts of India The Court Fees Act also specifies the documents which need not be stamped under the Act for the purpose of being used in Courts," *Balkaran Rai* v *Gobindanath Tewary*, 12 All 129 F B (139). 10 A W N 39

The Court Fees Act and the Suits Valuation Act are fiscal enactments and do not determine the question as to the proper Court for institution of suits (1) If the valuation be contested then the valuation must be determined by the Court, and (2) where the valuation can be ascertained correctly, the plaintiff cannot be allowed to overvalue or undervalue his claim with a view to choose his forum, *Inayat Husain* v *Bashir Ahmad*, 1932 A L J 416 1932 A I R 413 (All) 141 I C 141

Application of the Act.—The general rule is that Acts are prospective, and not retrospective in their operation, *Pramothanath Pal Choudhuri* v *Saurav Dasi*, 47 Cal. 1108: 24 C W N 1011 To this rule there are two exceptions—(*a*) where Acts are expressly declared to be retrospective and (*b*) where they only affect the procedure of the Court, *Javanmal* v. *Muktavai*, 14 Bom 516 But changes in law or amendments relating to procedure have retrospective effect, *Balkrishna* v *Bapu Yesaji*, 19 Bom 204; *Promothonath* v *Saurav Dasi*, 47 Cal. 1108: 24 C.W N. 1011.

A plaint was filed in a Court which was ultimately found not to have jurisdiction in the matter and the plaint was returned to be presented to the proper Court, but before the return of the plaint the Court Fees Act was amended, held, that the plaint must be deemed to have been instituted on the date of new presentation after return of plaint and the court-fee was payable under the amended Act, *Bimala Prasad Mookherjee* v. *Lal Moni Debi*, 30 C.W.N. 90: 1926 A.I.R. 355 (Cal): 91 I.C. 862. Stamp duty on an appeal filed after the Court Fees Act came into operation was held to be leviable according to the provisions of the Court Fees Act, even though the original suit was valued on the principles laid down in the Act XXVI of 1867, *Mt. Bhugobutty Kooer* v. *Mt. Kusturee Kooer*, 15 W.R. 272. So, where an appeal was returned because filed without a copy of the decree appealed against, before, but was again presented after the passing of the New Act of 1870, held that the appeal must be filed with stamp of the amount prescribed by the new law of 1870, *Aradhun Dey* v. *Gholam Hossein*, 7 W.R. 461. See also *G. L. Fagan* v. *Chandrakanta Banerji*, 7 W.R. 452; *In re Sreenath*, 7 W.R. 462. But where a plaint was presented

while the old Act was in force and it was subsequently discovered that the plaint is insufficiently stamped after the amending Act has come into force, held that the amount of court-fees must be calculated under the old law, *Tara Prasanna Chongdar* v. *Nrishingha Moorari Pal*, 51 Cal. 216: 28 C.W.N. 683: 39 C L J 212: 81 I C 763: 1924 A I.R. (Cal) 731.

Where the appeal was presented to an officer not properly authorized to receive appeals within the vacation, the Patna High Court held, the appeal must be deemed to have been presented on the re-opening date of the High Court when the proper officer was present, and as the amending Act came into operation before that date, the amended Act applied and the increased duty was payable, *Anand Ram Pramhans* v. *Ram Ghulam Sahu*, I L.R 2 Pat 264. 1922 Pat. C.W.N. 365: (1923) A I R 150 (Patna)

Where a party applied for a copy of the decree after Act VII of 1870 came into operation, held that the new Act applied although the decree may have been prepared when the old law was in force, *In re Hurechar Mahtoon*, 14 W R. 167.

Grant of Probate *de bonis non* is governed by the law in force at the time of the original grant and not by any *interim* modification introducing a higher rate, *Swarnamoyee* v. *Secretary of State*, 43 Cal 625: 20 C W N. 472 22 C L J. 370: 30 Ind Cas. 394 "What the Legislature appear to have intended is that where the full fee chargeable under the Court Fees Act on a probate at the time it is granted, has been paid, no further fee shall be chargeable when a second grant is made in respect of that property," *Ibid* See also *In the goods of Ameerun*, 15 W.R. 496

In an application for review of judgment, the fee payable is to be calculated on the court fee paid on the memorandum of appeal or plaint, as the case may be, although the Court Fees Act may have been amended in the meantime and scale of court fees raised, *Nanhi Lal Agrani* v. *Jogendra Chandra Dutta*, 39 C.L.J. 222; 82 I.C. 297: 28 C.W.N. 403: 1924 A I R 881 (Cal.).

Where the Act does not apply.—The Act has been declared inapplicable to proceedings before officers making settlements and survey when such a case is transferred to a Civil Court under sec 5 of Reg III of 1872, *Bibee Golap Kumari* v. *Muhammad Kadiruddin*, 12 C.W N. 917. This Act does not apply to applications under Ss 105 (1) and 105 (2) of the Bengal Tenancy Act, *vide* Sec. 105 (3) of the B. T. Act, and to proceedings before Settlement Officers under Reg III of 1872, Sec. 8 as amended by the Santal Parganas Justice and Laws Regulation, 1899 (III of 1899) (Bengal Code).

This Act does not apply to court-fees payable under sec. 170 of the Agra Tenancy Act which are to be computed under the Fourth Schedule to that Act. See U P. Act II of 1901 (U P Code, Vol II) Under sec 51 of the Land Acquisition Act (I of 1894), no costs are to be levied on copies of awards or agreement furnished to the parties

For construction of the Act, see Notes under sec. 6, *infra*

Government is interested:—The question whether court fee should be paid or not is really a matter that is important from the view of Government and Government alone, *Bombay, Baroda and Central India Railway Co* v *Mitthu*, 1931 A.L J. 727 133 I C 465 1931 A.I R 659 (All): 1931 I.R 673 (All.).

Extent.—Act 7 of 1870 has been declared in force—

in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s. 4 (1), Bur Code;

in British Baluchistan, by the British Baluchistan Laws Regulation (I of 1890), s. 3, Bal Code;

in the Santhal Parganas, by the Santhal Parganas Settlement Regulation (III of 1872) as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben Code, Vol. I;

in the sub-division of Angul, by the Angul District Regulation, 1894 (I of 1894), s. 3, Ben Code, Vol. I

It has also been declared, by notification under s 3 (*a*) of the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts, namely:—

the District of Hazaribagh, *see* Gazette of India, 1881, Pt. I, p. 570;

the District of Lohardugga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44; the District of Lohardugga then included in the present District of Palamau, separated in 1894), *see* Gazette of India, 1881, Pt I, p. 508;

the District of Manbhoom, *see* Gazette of India, 1881, Pt. I, p 509;

the Pargana Dhalbhoom in the District of Singhbhoom, *see* Gazette of India, 1881, Pt. I, p. 510;

the Scheduled Districts in Ganjam and Vizagapatam, *see* Gazette of India, 1898, Pt. I, p. 869;

the Tarai of the Province of Agra, *see* Gazette of I 1876, Pt. I, p. 505.

It has been extended by notification under s. 5 of the same Act to the Kolhan in the district of Singhbhoom, *see* Gazette of India, 1907, Pt. I, p 655, and under ss 5 and 5A of that Act to the following Scheduled Districts, namely:—The Garo Hills District, the Khasi and Jaintia Hills District, the Naga Hills District, the North Cachar District, the Mikir Hill Tract in the Nowgong District and the Dibrugarh Frontier Tract in the Lakhimpur District, provided that the Act does not apply to natives of these districts and tracts who are assessed to house-tax except in such places and cases as the Deputy Commissioner may withdraw from the operation of the exemption, *see* Assam Gazette, 1897, Pt I, p 861, Gazette of India, 1884, Pt. I, p 164, the Lushai Hills, with the same proviso, *see* Gazette of India, 1904, Pt I, p 913, and Assam Gazette, 1904, Pt. II, p 787

It has also been applied to the Baluchistan Agency territories by the Baluchistan Agency Laws Law, 1890, s 4 (1), Bal Code

The Act came into permanent operation in Aden on 1st April, 1876, *see* Bombay Government Gazette, 1876, Pt. I, p 956

British India.—*British India* shall mean all the territories and places within His Majesty's Dominions, which are for the time being governed by His Majesty through the Governor-General of India or through any Governor or other officer subordinate to the Governor-General of India. *Sec. 3 (7)—General Clauses Act (X of 1897).*

"Chief Controlling Revenue Authority" defined

2. In this Act, unless there is anything repugnant in the subject or context "Chief Controlling Revenue authority" means—

(*a*) in the Presidency of Fort. St. George, the Presidency of Fort William in Bengal and the territories respectively under the administration of the Governors of Bihar and Orissa and the North-Western Provinces and the Chief Commissioner of Oudh—the Board of Revenue;

(*b*) in the Presidency of Bombay, outside Sindh and the limits of the town of Bombay—a Revenue Commissioner;

(*c*) in Sindh—the Commissioner;

(*d*) in the Punjab and Burma, including Upper Burma—the Financial Commissioner; and

(*e*) elsewhere—the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf.

[For Bengal only—

In this Act unless there is anything repugnant in the subject or context,—

(*1*) *'Appeal' includes a cross objection;*

(*2*) *'Chief Controlling Revenue authority' means the Board of Revenue;*

(*3*) *'Collector' includes any officer not below the rank of Sub-Deputy Collector appointed by the Collector to perform the functions of a Collector under this Act;*

(*4*) *'Suit' includes an appeal from a decree except in section 8A*].

NOTES.

Change in law.—The present s. 2 was added by s. 2 of the Court-Fees (Amendment) Act, 1901 (X of 1901). The original section relating to repeal of enactment was repealed by the Repealing Act, 1870 (XIV of 1870).

"Chief Controlling Revenue Authority."—The Collector of Bombay and Superintendent of Stamps is the chief controlling Revenue Authority for Bombay. In the C. P. the Financial Commissioner is the Chief Revenue Authority.

For authority appointed for—

(1) the island of Bombay, *see* Bombay Government Gazette, 1902, Pt. I, p. 35.

(2) Baluchistan, *see* Gazette of India, 1908, Pt. I, p. 3 and

(3) the Assam Valley Districts and cert s of district of Cachar, *see* E. B. & e, 1 Pt I, p 5.

CHAPTER II.

FEES IN THE HIGH COURTS, AND IN THE COURTS OF SMALL CAUSES AT THE PRESIDENCY-TOWNS.

[IN BENGAL—*Fees payable in Courts and in Public Offices*]

Levy of fees in High Courts on their original sides

3. The fees payable for the time being to the clerks and officers (other than the sheriffs and attorneys) of the High Courts established by Letters Patent, by virtue of the power conferred by [section 15 of the Indian High Courts Act, 1861, or section 107 of the Government of India Act, 1915],

or chargeable in each of such Courts under No. 11 of the First, and Nos. 7, 12, 14, 20 and 21 of the Second Schedule to this Act annexed:

Levy of fees in Presidency Small Cause Courts

and the fees for the time being chargeable in the Courts of Small Causes at the Presidency Towns, and their several offices,

shall be collected in manner hereinafter appearing.

NOTES.

Amendments.—The words "Section 15............... Government of India Act, 1915" at the end of the *first paragraph* were substituted by sec 2 and Sch. I of the Repealing and Amending Act (XXIV of 1917) in place of "Statute 24 & 25 Vict. C. 104, sec. 15."

The number "sixteen" which appeared between the numbers "fourteen" and "twenty" was repealed by the Repealing and Amending Act (XII of 1891).

Effect of Notification bringing into force the amending Act.—A notification in the Fort. St. George Gazette, dated 5th May 1922, announced that an increase in the Court Fees payable on the original side of the High Court "do come into

force from the date of publication of the Fort St. George Gazette." The Gazette was received in the office at 5 P.M after office hours. Held, that the increased duty is payable even on plaints filed on the 5th May, 1922, *In re Court Fees*, 46 Mad. 685: 45 M.L J 557. 1923 M.W N 883 F.B.

Scope.—The words of s 3 of the Court Fees Act must be controlled by reference to s 15 of the High Courts Charter Act, *Mahomed Isack Sahib* v *Mahomed Mohidin*, 45 Mad 849; 43 M L J 436 (437) 70 Ind Cas 813 1922 M W N 511.

The power of the High Court to levy court fees on memoranda of appeal from Original Side is conferred by the Letters Patent which allows it to regulate its own procedure The provisions of the Court Fees Act does not apply, *Maung Ba Thaw* v *M S V M Chettiar*, 13 Rang 156.

Cases transferred to the High Court in its Original Side.

In a case transferred to the High Court under s 13 of the Letters Patent of the Madras High Court and tried by the High Court as a suit in its Original jurisdiction, the court fees payable are those payable under the Court Fees Act and not by the rules framed by the High Court, but in a suit filed in the Madras City Civil Court and transferred to the High Court, the court-fees payable would be those payable to the High Court as a Court of Ordinary Original Civil jurisdiction. *Abdul Hakim Sahib* v *Chattanadha Aiyar*, 60 M L J. 435: 33 L W 318: 132 I C 647: 1931 A I R. 457 (Mad.): 1931 I R. 679 (Mad)

Manner of Collection.—The court fee shall be collected under Ch. V of the Court Fees Act in stamps and not in cash, but the amount of fees payable is determined by Rules framed by the High Court under sec. 15 of the Letters Patent, and sec. 107 of the Government of India Act, on original suits and on memoranda of appeals from the original side.

"The mode of collecting the fees mentioned in s. 3 is dealt with in s 25 which provides that they shall be collected by stamps," *Krishna Mohan Sinha* v. *Raghunandan Pandey*, 1925 Pat C W.N. 65; I.L R. 4 Pat. 336: 1925 A.I.R 392 (Pat.): 87 I.C. 137. See also *In re Bhubaneswar Trigunait*, 52 Cal. 871: 29 C.W.N. 879: 95 I.C. 529: 1925 A I.R. 1201 (Cal.).

Presidency Small Causes Courts—

As to the Presidency Small Causes Courts, fees are to be paid under Ch X of the Presidency Small Causes Courts Act.

Chapter X of the Presidency Small Causes Courts Act (Act XV of 1882) deals with fees and costs and s. 77 of the la-

chapter, saves the application of ss 3, 5 and 25 of the Court Fees Act

Sec 3 of the Court Fees Act provides for the levy of fees in Presidency Small Cause Court, s. 5 provides for the procedure in case of difference as to necessity or the amount of fees in such Courts, s. 25 provides that all fees referred to in s. 3 are to be collected by stamps, *Ganpat* v. *Prem Singh*, 202 P.L R. 1912. 15 Ind Cas. 122.

Fees on documents filed &c, in High Courts in their extraordinary jurisdiction,

4. No document of any of the kinds specified in the first or second schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited, or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction;

or in the exercise of its extraordinary original criminal jurisdiction;

in their appellate jurisdiction

or in the exercise of its jurisdiction as regards appeals from the [judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction of the Court) of one] or more judges of the said Court, or of a division Court;

or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence;

as Courts of reference and revision

or in the exercise of its jurisdiction as a Court of reference or revision;

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

NOTES

Amendment.—By section 2 of Act XIX of 1922 the words "judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction of the Court of one" in the third paragraph were substituted in place of the words "judgment of two".

Local Amendments—

The section has also been amended by B and O Act I of 1922, for Bihar and Orissa and by Punjab Act VII of 1922 for Punjab which amendments substituted the word "one" for the word "two" between the words "of" and "or"

Application.—"Sec 4 does not apply to the High Courts in their Ordinary Original Civil, Criminal, Admiralty or Ecclesiastical jurisdiction," *Balkaran* v *Gobindanath*, 12 All. 129 F B.: 10 A W N 39

Memorandum of appeal to a High Court to be properly stamped.—Sec 4 of the Court Fees Act forbids a High Court to receive a memorandum of appeal insufficiently stamped, *Ram Sahay Ram* v *Lakshmaram Singh*, 3 P L J 74: 5 P L W. 18: 42 Ind Cas 675, *Lakhi Naram* v *Chowdhury Kirtibas*, 18 C L J 133· 19 Ind Cas 971, *Krishna Mohan Sinha* v. *Raghunandan Pandey*, 1925 Pat C W N. 65 (72) F.B · I.L R. 4 Pat. 336: 1925 A I R. 392 (394) (Pat.) In the last case it was held that s 4 deals with the fees on documents coming before the High Courts in the exercise of their Appellate or Revisional Jurisdiction in cases coming from the subordinate courts, or in their Extraordinary Original Jurisdiction.

Sec 4 is imperative in its terms and a Court cannot accept a memorandum of appeal upon which proper court-fees have not been paid, *Patil Shyamlal* v. *Gaurishankar*, 1929 A I R. 294 (N) 119 I C 700 In *Khatunmannessa Bibi* v *Durjodhone Roy Chowdhury*, 61 Cal 663: 38 C W N. 650: 1934 A I.R. 659 (Cal), the Calcutta High Court while holding that sec. 4 is mandatory, did give time to put in the deficit court-fees in memorandum of appeal filed with a court-fee of Rs. 2 while the proper court-fee payable was Rs. 975

The High Court has full power to refuse to accept a memorandum of appeal when it appears from the endorsement of the stamp reported that the amount of the court-fees paid is insufficient, otherwise the provisions of s. 4 of the Court Fees Act would be evaded, *Brijbhukhan* v. *Tota Ram*, 118 I C. 228: 1929 A.I R. 75 (All.). The Court will be justified in rejecting a memorandum of appeal if filed with a court-fee of eight annas where it should have borne court-fees amounting to Rs 90 as the appellant should at the time of filing the appeal determine whether he should incur the expenses or not, *Atmaram* v. *Singhai Kasturchand*, (1930) 27 N L.R. 183: 124 I.C. 241: 1930 A I R. 224 (Nag.): 1930 I R 257 (Nag.).

Powers of a single Judge of a High Court—A single Judge of a High Court may refuse to accept an insufficiently stamped document, but if it has been accepted then he cannot reject

chapter, saves the application of ss. 3, 5 and 25 of the Court Fees Act

Sec 3 of the Court Fees Act provides for the levy of fees in Presidency Small Cause Court, s 5 provides for the procedure in case of difference as to necessity or the amount of fees in such Courts, s. 25 provides that all fees referred to in s 3 are to be collected by stamps, *Ganpat* v *Prem Singh*, 202 P L R 1912. 15 Ind Cas 122

Fees on documents filed &c. in High Courts in their extraordinary jurisdiction,

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or in the exercise of its extraordinary original criminal jurisdiction;

in their appellate jurisdiction

or in the exercise of its jurisdiction as regards appeals from the [judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction of the Court) of one] or more judges of the said Court, or of a division Court;

or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence;

as Courts of reference and revision

or in the exercise of its jurisdiction as a Court of reference or revision;

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

NOTES.

Amendment.—By section 2 of Act XIX of 1922 the words "judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction of the Court of one" in the third paragraph were substituted in place of the words "judgment of two".

Local Amendments—

The section has also been amended by B and O Act I of 1922, for Bihar and Orissa and by Punjab Act VII of 1922 for Punjab which amendments substituted the word "one" for the word "two" between the words "of" and "or".

Application.—"Sec 4 does not apply to the High Courts in their Ordinary Original Civil, Criminal, Admiralty or Ecclesiastical jurisdiction," *Balkaran v Gobindanath*, 12 All 129 F B : 10 A.W N 39

Memorandum of appeal to a High Court to be properly stamped.—Sec 4 of the Court Fees Act forbids a High Court to receive a memorandum of appeal insufficiently stamped, *Ram Sahay Ram v Lakshmaram Singh*, 3 P L J 74· 5 P L W 18· 42 Ind Cas 675, *Lakhi Naram v Chowdhury Kirtibas*, 18 C L J. 133: 19 Ind Cas 971, *Krishna Mohan Sinha* v *Raghunandan Pandey*, 1925 Pat C.W N 65 (72) F B : I L R 4 Pat. 336: 1925 A I R 392 (394) (Pat). In the last case it was held that s. 4 deals with the fees on documents coming before the High Courts in the exercise of their Appellate or Revisional Jurisdiction in cases coming from the subordinate courts, or in their Extraordinary Original Jurisdiction

Sec 4 is imperative in its terms and a Court cannot accept a memorandum of appeal upon which proper court-fees have not been paid, *Patil Shyamlal* v *Gaurishankar*, 1929 A I.R 294 (N) 119 I C 700 In *Khatumannessa Bibi* v *Durjodhone Roy Chowdhury*, 61 Cal 663: 38 C W N 650· 1934 A.I R 659 (Cal), the Calcutta High Court while holding that sec. 4 is mandatory, did give time to put in the deficit court-fees in memorandum of appeal filed with a court-fee of Rs 2 while the proper court-fee payable was Rs. 975

The High Court has full power to refuse to accept a memorandum of appeal when it appears from the endorsement of the stamp reported that the amount of the court-fees paid is insufficient, otherwise the provisions of s 4 of the Court Fees Act would be evaded, *Brijbhukhan* v. *Tota Ram*, 118 I C. 228: 1929 A I.R. 75 (All). The Court will be justified in rejecting a memorandum of appeal if filed with a court-fee of eight annas where it should have borne court-fees amounting to Rs. 90 as the appellant should at the time of filing the appeal determine whether he should incur the expenses or not, *Atmaram* v. *Singhai Kasturchand*, (1930) 27 N L R. 183: 124 I.C. 241: 1930 A.I R. 224 (Nag): 1930 I.R 257 (Nag.).

Powers of a single Judge of a High Court—A single Judge of a High Court may refuse to accept an insufficiently stamped document, but if it has been accepted then he cannot reject it

on the ground that it is insufficiently stamped unless the matter is within his jurisdiction, *Shahzadi Begam* v *Alakh Nath*, 1935 A L J 681 F B

Reference—As there is no mention in schedules 1 and 2 of the Court Fees Act as to the court-fees payable on a reference under s 66 of the Income Tax Act, no court-fees are leviable on such a reference, *Commissioner of Income Tax* v. *Khemchand*, 1933 A I R 148 (Sind). 145 I C 254: 27 S.L.R. 243.

No document, etc., shall be filed, exhibited, or recorded in or shall be received or furnished.

The word *shall not be filed, etc*, mean that such documents cannot come into existence unless the requisite stamp is paid, *Sahai Nund* v *Mungniram*, 12 Cal 542

Document—A memorandum of appal is a document within the meaning of this section as well as sections 25, 28, 30 and Schedules I and II of the Court Fees Act, *Balkaran* v *Gobinda Nath*, 12 All 129 F B (1890) 10 A W N 39 See also *Krishna Mohan Sinha* v *Raghunandan Pandey*, F B 1925 Pat C.W.N. 65 I L R 4 Pat 336. 1925 A I R 392 (Pat) · 87 I C 137.

"Filed"—Means that the document has been admitted and put on the files of Court, *Moti Shahu* v. *Chhatri Das*, 19 Cal. 780; *Amjad Ali* v *Muhammad Ismail*, 20 All 11 (17). Where an appeal is presented with the memorandum insufficiently stamped the Court is not bound to receive the same, *Ram Sahay* v *Pandit Lachminarayan*, 3 P L J 74. 3 P L.W. 18: 42 I.C. 675 But where the document has already been received it is not for the party to say that the document should be struck off from the record The Court may allow the other party to pay the proper fee, *Manecklal Vadilal* v *Chandulal Balabhai Shah*, 1926 A.I R 343 (Bom)

Presentation of Appeal—No appeal is legally presented if the memorandum of appeal is not properly stamped, *Shahadat and others* v. *Hukam Singh*, (1924) A.I R. 401 (L.)

Sec 4 of the Court Fees Act is imperative in its terms and makes it impossible for the Court to entertain a memorandum of appeal upon which the proper amount of court-fees has not been paid, *Lakhi Narain Jagdeb* v. *Chowdhury Kirtibas Das*, 18 C.L.J. 133 (136): 19 I.C. 971.

Furnished—Furnishing is made at the time when the Court determines that a grant is to be made and when it is ready to be issued to the party applying for it, *Dhunput Singh* v. *The Government*, 17 W.R. 489. Where a will was proved but there was no actual grant because no stamp duty was paid, held that there was no grant and the grant of probate cannot be proved,

Alamelammal v *P N K Suryaprakasaroya Mudaliar*, 38 Mad. 988 29 M L J 680

Division Court.—A Division Court must be constituted of two or more Judges of the High Court, *Nabu Mondul* v *Cholim Mullick*, 25 Cal 896 (905) 2 C W.N 405 F B. See also sec 108 of the Government of India Act, 1915, and the rules framed by several High Courts according to their respective Letters Patent.

Letters Patent Appeals.—As the words originally used in the third para of the section were "two or more Judges", it was decided by the Allahabad, Lahore and the Patna High Courts that no court-fee is leviable under sec 10 of the Letters Patent on an appeal from the judgment of a single Judge, *Bhadool Pandey* v *Munni Pandey*, 44 All 13: 19 A.L J. 677: 63 I.C. 318, *Har Dyal* v *Secy of State*, 3 Lah 420: 68 I C. 428: 1923 A I R (Lah) 275, *Raghubar Singh* v *Jethu Mahton*, 1922 C W N (Pat) 88. 65 Ind Cas 675: 3 P.L T. 194 To avoid the difficulty the word "one" has been substituted for the word "two" by Act XIX of 1922 and local amendments have been made in Bihar and Orissa by Act I of 1922 and in the Punjab by Act VII of 1922 On an appeal under sec 10 of the Letters Patent of the Allahabad High Court from an order of a single Judge of the Court remanding a case under sec. 562 of the C P C (1882), the proper fee was held to be Rs. 2, *Balli Rai* v *Mahabir Rai*, 21 All 178. 19 A W N. 23

Cross-objection —No cross-objection can be filed in Letters Patent Appeals as Or XLI, r 23, C P C. does not apply, *Brojendra* v *Prasanna Kumar*, 32 C L J 48; *Kausalia* v. *Gulab*, 21 All 297

Review —Court-fees can be levied on an application for review of a judgment of a Division Bench passed on Letters Patent appeals, *Husaini Begum* v *The Collector of Muzaffarnagar*, 11 All. 176: (1889) 9 A.W.N. 27.

Orders refusing leave to appeal.—It has been held in *Ram Chandra Golder and others* v *Hamidali and others*, 56 Cal 482: 33 C.W.N. 32: 1929 A.I.R. 575 (Cal): 117 I C. 595, that a memorandum of appeal against the order of a single Judge arising out of a difference of opinion under sec. 98, C. P. C., need only bear court-fees under Art. 11 of the second Schedule to the Court Fees Act

Power of Deputy Registrar to return Memorandum of appeal.—The Deputy Registrar of the High Court has no power to return the memorandum of appeal for insufficiency of court-fees paid on it. The right course for that officer is, when his request to make good the deficiency is not complied with to

lay it before the Court and if the party is willing to pay them the Deputy Registrar is to receive the same and if the time has expired to lay it before the Court, *Syad Sunbur Ali* v. *Kali Charan*, 24 W R 258, but the power to return a memorandum of appeal is based on the rules framed by each High Court.

Procedure in case of difference as to necessity or amount of fee

5. When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter, and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the taxing officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint, either generally or specially, in this behalf.

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court [*Registrar—in Madras*] whose decision thereon shall be final, except when the question is, in his opinion, one of general importance in which case he shall refer it to the final decision of the First Judge [*Chief Judge—in Madras*] of such Court.

The Chief Justice shall declare who shall be taxing officer within the meaning of the first paragraph of this section.

NOTES

Local Amendment.—This section has been thus amended in 1922 in Madras by sec. 3 of Madras Act V of 1922: "In the second paragraph of sec. 5 of the principal Act, the words '*Registrar*' and '*Chief Judge*' shall be substituted for '*Clerk of the Court*' and '*First Judge*', respectively."

Application—"When a person tenders a stamped document to the Registrar of the High Court, and asks him to enter his appeal, it is clear that he is, within the meaning of this Act, paying a fee to an officer of that High Court, and in taking that fee, the High Court is acting by virtue of the general powers

conferred upon it by sec 15 of the High Court's Charter Act." Hence sec 5 of the Court Fees Act applies and it is competent to the Chief Justice to refer the matter to another Judge for decision, *H Mahomed Ishack Sahib* v *Mahomed Mohideen and another*, 45 Mad 849 43 M L J 436 70 Ind Cas 813: (1922) M W N 511 · 16 L W 210, 1922 A I.R. 421 (Mad) See also *Perumal Chetty* v *Kandasamy Chetty*, 46 Mad 592. 44 M L.J 146 · 17 L W 238 (1923) A I R 160 (Madras): 1923 M.W.N. 160 72 I C 925.

Probate Duty.—No doubt has at any time been felt either in this Court or in Bombay that S 5 applies to probate duty, *In re Bhubaneswar Trigunait*, 29 C W N. 879 · 52 Cal. 871 95 I C 529 · 1925 A I R 1201 (Cal) See also *Gangaram Tillockchand* v *The Chief Controlling Revenue Authority*, 52 Bom 61 29 Bom L R 1511 · 106 I.C 66: 1927 A I R. 643 (Bombay)

Scope.—Sec. 5 does not confer jurisdiction on the judge of the High Court to decide questions regarding sufficiency of court-fees paid in subordinate Courts, *Maung Nyi Maung* v. *The Mandalay Municipal Committee*, 12 Rangoon 335 (338): 1934 A I R 268 (Rang) But see s. 12, cl. ii read with s 28 which does confer such power

Difference as to amount of court-fees payable.—A question whether court-fees are payable at the old rate or at the amended rate involves a difference as to the amount of court-fees payable The words of s. 5 are quite general and there is no reason why their ordinary meaning should be confined to difference as to the amount of valuation only, *Gangaram Tillockchand* v *The Chief Controlling Revenue Authority*, 52 Bom. 236 29 Bom L R 1511: 106 I.C. 66, 1927 A.I.R 643 (Bombay)

Officer whose duty, etc.—The Chief Inspector of Stamps is an officer whose duty it is to see that proper court-fees are paid under the Court Fees Act and the decision of the taxing officer on a difference of opinion between the Chief Inspector of Stamps and the suitor is final, *Musst Bhagwanti* v. *Musst. Dhanwanti*, 1932 A.L J. 244: 140 I C. 68: 1932 A.I.R. 319. (All.).

Stamp Reporter can revise his report.—If the Stamp Reporter acting correctly in accordance with the rule then prevailing accepts a memorandum of appeal as sufficiently stamped then the Stamp Reporter thereby does not become completely *functus officio*, if the appeal be registered and can if law is interpreted differently in subsequent proceeding,

question as to whether the document is sufficiently stamped within the period the appeal remains pending unless the matter has been decided by the taxing officer. Such a Stamp Reporter in giving effect to the later view of the law merely corrects his report and does not give a restrospective effect to the later view, *Suddheshwari Prasad and other* v. *Ram Kumar Rai*, 12 Pat 694 14 P L T 180 1933 A.I R 234 (Patna): 144 I C. 684 6 I R 2 (2) (Pat)

Decision of the taxing officer final.—The word "final" in section 5 of the Court Fees Act has the same meaning as in section 12, though it is applied to a different subject. In section 5 it is applied to a decision as to the necessity of paying a fee or the amount thereof, whereas in section 12 it is applied to a decision as to every question relating to valuation for the purpose of determining the amount of any fee chargeable under Chapter III on a plaint or memorandum of appeal. The cases in which it has been held that, notwithstanding the use of this word in section 12, an appeal lies as to the decision as to the category in which the relief sought by the plaintiff or appellant falls, do not mean that the decisions which the section declares to be final, are nevertheless appealable, but that the question of category is not a question relating to valuation and therefore is not declared by the section to be final. In both sections 5 and 12 it is used in the ordinary legal meaning of final. "It could not, in my opinion, be contended that category is not under section 5 of the Court Fees Act for the taxing officer, otherwise he could not decide whether any fee was payable or the amount thereof As to section 5 of the Court Fees Act, there is no provision so far as I can ascertain under which the Court or any Bench of the Court has power to consider the propriety of a decision under that section by appeal, in an appeal, or in revision," *Balkaran Rai* v *Gobinda Nath Tewary*, 12 All 129 (152, 153 & 156) F B : (1890) 10 A W N. 39 F B.; *Lurkhur Chaube* v. *Rambhajan Chaube*, 23 A W.N. 214 . The decision of a taxing officer as to the amount of court-fees payable and therefore his decision as to the category within which the suit falls, is *final* and binding under section 5 of the Court Fees Act, *Kuar Karan Singh* v. *Gopal Roy*, 32 All. 59: 6 A.L.J. 972; 4 Ind. Cas. 123 The taxing officer's decision cannot be questioned at the hearing of appeal, *Rangapai* v. *Baba*, 20 Mad. 398; *Kasturi Chetti* v. *Deputy Collector of Bellary*, 21 Mad 269; *In re Bhubaneswar Trigunait*, 29 C W.N. 879: 52 Cal. 871: 95 I C. 529; 1925 A I.R. 1201 (Cal.); *Gajendra Nath* v. *Sulochana*, 39 C W.N. 131: 60 C.L.J. 201.

The Court has no power to interfere with the decision of the taxing officer as his decision is final under s. 5 of the Court Fees Act, 1870, *T. S Swaminath Aiyar and others* v. *M.*

Guruswami Mudaliar and others, 105 I C. 119: 1927 A I.R. 940 (Madras): 26 L.W 378 53 M L J. 457.

Decision under s 5 of the Court Fees Act of the taxing officer of the High Court, or of the Chief Justice or the Judge appointed under s 5, is final and is not liable to be challenged by way of appeal or revision, *Gangaram Tillockchand* v *The Chief Controlling Revenue Authority,* 52 Bom 61: 29 Bom L R. 1511. 106 I C 66: 1927 A I R. 643 (Bombay)

The decision of the taxing officer whether right or wrong cannot be questioned at the hearing of the appeal, *Tej Ram* v *Maqbul Shah,* 108 I C 746: 1928 A I R. 370 (Lah). See also *Puran Singh* v *Kesur Singh,* 39 P R 1907

The High Court has no power or jurisdiction to interfere with an order passed by the taxing officer settling the amount of court-fees payable on a memorandum of appeal, which order is final and against which there is no appeal, review or revision, *Hitendra Singh* v *Maharajadhiraj of Darbhanga,* 7 Pat L T. 392 92 I C 626: 1926 A I R. 147 (Patna).

Absence of decision by the taxing officer.—If there be no decision by the taxing officer under section 5 of the Court Fees Act, objection as to sufficiency of the court-fees paid, can be raised at the hearing of the appeal, *Jugal Pershad Singh* v. *Parbu Narayan Jha,* 37 Cal 914: 8 I C. 1145, *Kasturi Chetti* v *Deputy Collector, Bellary,* 21 Mad 269 The Court can decide a question as to the deficiency in court-fees, when there was no decision by a taxing officer of the question, *Kandunni Nair* v *Ithunni Raman Nair,* 53 Mad 540: 58 M.L.J. 497; 1930 M W N 291: 31 L W 826: 127 I C. 128, 1930 A I.R 597 (Mad): 1930 I R 944 (M.) See also *Abdul Samad Khan* v. *Anjuman Islamia, Garakhpore,* 1933 A L J. 1537: 1934 A I R. 56 (All), where the taxing officer declined to entertain the question and it was held that the Court can consider the question

Erroneous decision by the taxing officer.—In the case of *Lagan Burt Kuar* v *Khakhan Singh,* 3 Pat.L J. 92, it was held that the decision of the taxing officer even if erroneous is binding on the party. See also *Md. Sadik* v. *Md. Jan,* 11 All. 91 and *Badri Pershad* v. *Kundan Lal,* 15 All. 117: 13 A W.N. 45; *Krishna Mohan* v. *Raghunandan Singh,* 4 Patna 336: 1925 Pat. C.W.N. 65 (75): 1925 A.I R. 392 (Pat.): 87 I.C. 137 *supra;* but in *Anna Narayan Pavji* v. *Madhyama Sthitisila Paraspara, etc.,* 46 Bom. 840: 25 Bom.L.R. 313: 67 Ind. Cas. 364: 1922 A.I.R. 172 (Bombay) the Bombay High Court apparently disregarded the erroneous decision of the taxing officer.

Character of the decision of taxing officer.—The decision of a taxing officer under section 5 of the Court Fees Act as to the necessity of paying a fee or the amount thereof is not a decree as *decree* is defined in section 2 of the Code of Civil Procedure. It is not an *order* as defined in section 2 of the Code of Civil Procedure, his decision is not the decision of the Civil Court. A further reason for that opinion is that the taxing officer is not a Court within the meaning of that section, *Balkaran Rai* v *Gobinda Nath Tewary*, 12 All. 129 F.B. (156 and 157): (1909) 10 A W.N 39.

Taxing officer is not bound to give advice—The taxing officer is not bound to give advice to the party, *Balkaran Rai* v. *Gobinda Nath Tewary*, 12 All 129 F.B : 10 A.W.N. 39

Power of the taxing officer.—The wording of section 5 is so explicit and general that it leaves the Court no option The taxing officer has jurisdiction to fix the amount of fee payable and if he decides that the valuation put by the appellants upon the relief was incorrect, he has the power to correct it, even if he has done anything which the law does not empower him to do The Court Fees Act gives the High Court no jurisdiction to interfere with his decision as to the amount of the fee, *Ram Sekhar Prasad Singh* v *Sheonandan Dubey*, 2 Pat 198· 1922 Pat C.W N 337 70 I C 43: 1923 A I.R. 137 (Patna)

Under section 5 the High Court has power to alter the valuation of a suit with regard to its own memorandum of appeal, which power, however, is delegated to the taxing officer or the taxing judge whose decision again is final. Even if those officers should make a manifest mistake in the exercise of their jurisdiction, their decision is not subject to appeal or review by the Court itself [Per *Das J. contra* The taxing officer has no such power], *Krishna Mohan Singh* v. *Raghunandan Pandey*, 1925 Pat. C.W.N. 65 (75) F B.: 4 Patna 336: 1925 A.I.R. 392 (P.): 87 I.C. 137.

Under section 5 of the Court Fees Act power of the Court to decide disputed questions of court-fees is vested in the taxing officer subject to his power to *refer* the matter to the taxing judge when a question of general importance arises. This authority extends to all such questions arising in the High Court, whether the deficiency alleged is on the memorandum of appeal to the High Court or on a plaint or memorandum of appeal filed in the Court below, *Bahal Kuar* v. *Narain Singh*, 22 A.L.J. 1038: 84 I.C. 822: 1925 A.I R. 184 (All).

The Registrar has no power to direct an appellant to deposit any sum of money in Court as a condition precedent to having

his case tried, *Janak Prasad* v *Askaran Prasad*, I.L.R. 6 Pat. 602: 105 I C 742, 1928 A I R 29 (Patna): 9 P L T 337.

Demand of court-fees not paid in the lower Courts:— The jurisdiction of the taxing officer is limited to cases in which it is alleged that a document filed, exhibited or received in the High Court is not sufficiently stamped and does not extend to cases in which it is alleged that a party paid insufficient court-fee on his plaint or memorandum of appeal in the lower appellate Court To this class of cases section 12 (ii) will apply, *Mithoolal* v *Musst Chameli*, 1934 A L J 957: 150 I C 653: 1934 A I R 805 (All) *Contra* see *Bidhubhusan Baksi* v. *Kalachand Roy*, 31 C W N. 1045: 106 I C 335· 1927 A I.R. 775 (Cal) where it was held that the taxing officer should make the demand

Duty of taxing officer.—It is no part of the duty of a taxing officer or of a judge or Court on a question as to the sufficiency of a stamp or a fee to consider whether a plaintiff or an appellant is asking for more declarations or reliefs than are required for his protection A plaintiff or an appellant may have reasons, which whether they are good or bad, may not be apparent to a taxing officer or taxing judge for asking for several declarations or reliefs It is not the province of the taxing officer or the taxing judge to decide what are the declarations or reliefs which a plaintiff or an appellant may require for his protection To impose upon a taxing officer or the taxing judge such a duty would be to impose upon him a duty hardly, if at all, less onerous or difficult than the duty of deciding the case itself, *Balkaran Rai* v *Gobind Nath*, 12 All. 129 (161): 10 A W N. 39.

Power of the Chief Justice.—Section 5 makes it clear that such reference is to be heard by the Chief Justice or by such Judge of the High Court as the Chief Justice may appoint, *In the Goods of Harriett Teviot Kerr*, 18 C.W.N 121 (128): 18 C L J. 308: 21 Ind. Cas. 502; *Kachera* v. *Kharag Singh*, 33 All. 20: 7 A L J. 842: 7 Ind. Cas 315

Power of Division Bench.—A Division Bench has no jurisdiction to hear a stamp reference even though it is referred to them by the taxing judge, *Khachera* v. *Kharag Singh*, 33 All. 20: 7 A L.J. 842: 7 Ind. Cas. 315; *Kuldip* v. *Harihar*, 75 I.C. 871: 1924 A.I.R. 161 (P.). Where the Court of first instance rejected the plaint for insufficiency of stamp and on appeal to the High Court, the taxing officer, agreeing with the view of the trial Court required the appellant to pay additional court-fees calculated under section 7, paragraph IV of the Act, held that the decision of the taxing officer is final that the Devision Bench has no jurisdiction to re-open it :

Character of the decision of taxing officer.—The decision of a taxing officer under section 5 of the Court Fees Act as to the necessity of paying a fee or the amount thereof is not a decree as *decree* is defined in section 2 of the Code of Civil Procedure. It is not an *order* as defined in section 2 of the Code of Civil Procedure; his decision is not the decision of the Civil Court. A further reason for that opinion is that the taxing officer is not a Court within the meaning of that section, *Balkaran Rai* v *Gobinda Nath Tewary*, 12 All. 129 F.B. (156 and 157): (1909) 10 A.W N 39

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Under section 5 the High Court has power to alter the valuation of a suit with regard to its own memorandum of appeal, which power, however, is delegated to the taxing officer or the taxing judge whose decision again is final. Even if those officers should make a manifest mistake in the exercise of their jurisdiction, their decision is not subject to appeal or review by the Court itself [Per *Das J contra.* The taxing officer has no such power], *Krishna Mohan Singh* v. *Raghunandan Pandey*, 1925 Pat. C.W N. 65 (75) F B : 4 Patna 336: 1925 A I R. 392 (P.): 87 I.C 137.

Under section 5 of the Court Fees Act power of the Court to decide disputed questions of court-fees is vested in the taxing officer subject to his power to refer the matter to the taxing judge when a question of general importance arises. This authority extends to all such questions arising in the High Court, whether the deficiency alleged is on the memorandum of appeal to the High Court or on a plaint or memorandum of appeal filed in the Court below, *Bahal Kuar* v *Narain Singh*, 22 A.L J. 1038: 84 I C. 822: 1925 A.I.R. 184 (All.).

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the appeal was admitted, *Musst Chandrabati Koer* v. *Goorey Lal Singh*, 4 Pat L J. 700: 1920 C.W.N. (Pat.) 179: 52 Ind Cas 508, *Chunni Lal* v. *Sheocharan Lal and others*, 47 All. 756: 1925 A I R 787 (All) 23 A L J 725: 89 I.C. 122.

The High Court has no power or jurisdiction to interfere with an order passed by the taxing officer settling the amount of court-fees payable on a memorandum of appeal, which order is final and against which there is no appeal, review or revision. Even if the Court is of opinion that the court-fee levied is in excess of that payable under the law it has no power to order a refund of the excess amount claimed, *Hitendra Singh* v. *Maharajadhiraj of Darbhanga*, 92 I C 626: 1926 A I R. 147 (P): 7 Pat L T. 392

Powers of a taxing judge.—A taxing judge must himself decide the point referred to him for his decision and he cannot make a reference to a Division Bench, *Dhanukdhary Prasad Pandey* v *Ramadhikary Misir*, 12 Patna 188: 13 P.L T. 810: 142 I C 617 1933 A I R 81 (Patna) ; nor can the taxing judge demand court-fees not paid in the lower Court, *Maung Nyi Maung* v *Mandalay Municipal Committee*, 12 Ran 335: 1934 A.I R 268 (Ran) although in *Bidhu Bhusan Bakshi* v. *Kalachand Roy*, 31 C W N 1045, such a demand was made.

Examination of stamp paper.—Examination of the stamp paper itself belongs more properly to the revenue officer of the Government, and consequently the stamp paper itself, if necessary, should be forwarded to the Collector for examination. The Registrar of the High Court is not to examine it, *Bhikoo Molla* v. *Rashmonee Dossee*, 9 W.R. 357.

CHAPTER III.

FEES IN OTHER COURTS AND IN PUBLIC OFFICES.

[*Computation of fees—in Bengal.*]

Fees on documents filed, &c., in Mufassil Courts, or in public offices

6. (*1*) Except in the Courts hereinbefore mentioned, no document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited, or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document, there be paid [*has been paid—in Bengal*] a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document

[U. P. amendment—

Provided that where such document relates to any suit, appeal or other proceeding under the Oudh Rent Act, 1886, the Agra Tenancy Act, 1826, or the United Provinces Land Revenue Act, 1901, the proper fee shall be three-quarters of the fee indicated in either of the said schedules except where the document is of any of the kinds specified as chargeable in the first schedule and the amount or value of the subject-matter of the suit, appeal or proceeding to which it relates exceeds the value of Rs. 500:

Provided further that the fee payable in respect of any such document as is mentioned in the foregoing proviso shall not be less than that indicated by either of the said schedules before the commencement of this Act.]

[For Bengal only—

(*2*) *Notwithstanding anything contained in sub-section* (*1*) *or in any other Act, a Court may receive a plaint or memorandum of appeal in respect of which an*

insufficient fee has been paid, subject to the following conditions, namely:—

(*a*) *no such plaint or memorandum of appeal shall be registered unless the plaintiff or appellant has, before such date as the Court may have fixed in this behalf paid to the Court such reasonable sum on account of court-fee as the Court may direct;*

(*b*) *the Court shall reject the plaint or memorandum of appeal if the sum referred to in clause (a) is not paid before the date fixed by the Court.*]

NOTES

Amendment.—By sec. 6 of the Court Fees (Bengal Amendment) Act, VII of 1935 the whole section as amended for Bengal has been transferred from Chapter III and inserted after section 5 in Chapter II

By the amendment the rigid law hitherto in force has been somewhat relaxed Formerly the party was required to pay the whole amount before a plaint or memorandum of appeal could be registered, but under the present law as applicable to Bengal, payment of a reasonable sum in court-fees would entitle a party to have his plaint or memorandum of appeal to be registered but he should pay the whole amount before the case is heard, as otherwise the Court will not be able to record a finding that proper court-fees have been paid (sec. 8B) The Court cannot proceed with the suit or appeal unless it finds that the whole of the court-fees have been paid

Application of the section—Appeals must be valued according to the provisions of the Act in operation at the time of its presentation, and the original valuation under the repealed enactment is to be disregarded; *Proceedings*, 15th Nov 1870; 5 Mad. H. C. R. Ap. 44.

The Colonial Courts of Admiralty (India) Act, XVI of 1891.—S. 4—Court-fees in suits instituted in the Colonial Courts of Admiralty at Rangoon, Aden or Karachi, shall unless the jurisdiction of the Court is to be exercised in any matter relating to the slave trade, be leviable in accordance with the provisions of Chapter III of the Court Fees Act, 1870.

Court Fees in suits in the Colonial Court of Admiralty at Rangoon, Aden or Karachi.

Scope.—Section 6 contains a prohibition against the use of improperly stamped documents in respect to the subordinate Courts, *Krishna Mohan Sinha* v *Raghunandan Pandey*, 1925 Pat C W N 65 (72). 4 Patna 336: 1925 A I.R 392 (Patna): 87 I C 137 F.B

Construction of the Act.

Title—The title of an Act may be resorted to to explain an enacting clause when doubtful, *Hurro Chander* v. *Shoorodhani Debya*, 9 W R 402 (404) F.B

Headings—The headings prefixed to a section or set of sections are regarded as preamble to those sections, *Maxwell on Interpretation of Statutes*, 6th Ed page 92, *Halsbury's Laws of England*, Vol XXVII, pp 117-118.

The heading of a group of sections cannot be pressed into a constructive limitation upon the exercise of the powers given by the express words of the Act, *Abdul Rahim* v. *The Municipal Commissioners of the city of Bombay*, (P.C) 42 Bom 462: 23 C W N 110. 48 I C. 63 See also *In re Ananta Lal Chackerbutty*, 59 Cal 128· 35 C W N 1103: 1932 A.I.R 346 (Cal.)

Marginal Notes—The marginal notes of an Act of Parliament cannot be referred to for the purpose of construing the Act, *Balraj Kunwer* v. *Rai Jagatpal Singh*, 31 I.A 132 26 All. 393: 8 C W N 699 (705): 1 A.L J. 384· 11 Bom L R. 516. See also the cases cited in *Nawab Bahadur of Murshidabad* v. *Gopinath Mandal*, 13 C L J. 625 (630); *Aiyalam Kesava Chetti* v. *The Secretary of State for India*, 42 Mad. 451: 36 M.L J 222. 51 I C 46, *Sheikh Chamman* v *Emperor*, 1919 Pat. C W.N 463 1 P L.T 11

Proceedings in Council—The Court cannot refer to the proceedings in the Legislative Council to determine the meaning of the Statute, *Sarat Sundari* v *Uma Prosad*, 8 C.W.N. 578; see also *Firm of Ratanchand Ramkrishandas* v. *Sahiram Dunichand*, 13 S L.R. 23: 52 I.C. 139; nor is it permissible to refer to the speeches of the Legal Member, *Queen-Empress* v. *Bal Gangadhar Tilak*, 22 Bom. 112, *Dinanath* v. *Raja Sati Prasad*, 27 C.W.N. 115: 36 C.L J. 220: 72 I C. 663

Act to be strictly construed.—An enactment imposing stamp duties on the subject must be strictly construed, *Empress* v. *Sadaanand*, 8 Cal 259: 10 C.L R. 367; *Manindra Chandra* v. *Secretary of State*, 34 Cal. 257: 5 C.L J. 148; *Mylapore Fund* v. *Madras Corporation*, 31 Mad. 408; *In re Port Canning Land Improvement Company, Ltd*, 16 W.R. 208; *Girdhar Nagjisl* v. *Ganpat Moroba*, 11 Bom. H. C. A. C 129; *Muhammad Sal* v. *Nabian Bibi*, 8 All. 282 (287); *Lumsden* v. *Inland Rev. Commissioners*, 1914 App. Cases 877 (897); *Aherjan P*

Sayed Abdul Alim Abed, (1930) 53 C.L.J. 91: 34 C.W.N. 1129: 130 I.C. 369: 1930 A.I.R 787 (Cal); *Thakan Chowdhury v Lachmi Narain*, 14 Patna 4. 15 P.L.T. 548: 152 I.C. 244: 1934 A.I.R 571 (Pat) S B, where it was held that the analogy of the special provisions of the Land Acquisition Act should not be extended

Construction of the Act should be favourable to subject.—The construction should be as far as possible in favour of the subject, *Amanut Begum v Bhajan Lal*, 8 All 438: 6 A.W.N. 146 See alos *Muhammad Salimullah Khan v. Khalil-ur-Rahaman*, 54 All. 465. 1932 A.L.J 149. 140 I.C 47. 1932 A.I.R. 526 (All.); *Srikrishna Chandra v Mahabir Prasad*, 55 All 791: 1933 A.L.J. 673: 149 I C 198: 1933 A I R 488 (All.) F B. The Court Fees Act is a fiscal enactment and ought to be liberally construed, *Subramania Ayyar v Rama Ayyar*, 1927 A I R 1902 (Mad): 105 I C 881· 54 M L J 67 See also *Beli Ram v Ishar Das*, 8 Lah. 730 110 I C 264. 1928 A.I.R 113 (Lah.); *Kalicharan Roy v Kesho Prasad Singh*, 4 Pat.L.J. 561: 51 I.C. 15.

The language imposing duty must be clear and unambiguous The subject cannot be taxed except by clear and unambiguous language, *Halsbury's Laws of England*, Vol. 27, p 180; *Reference*, 9 Mad 146 (148) F B, *In re Chin Ah Aing*, 24 Ind Cas 823: 7 L B R 359: 7 Bur L T 275

Statutes which impose pecuniary burdens are subject to the rule of strict construction, and all charges upon the subject must be imposed in clear and unambiguous terms, as they tend to operate as penalties The subject is not to be taxed unless the language of the statute clearly imposes the obligation, *Thaddeus Naphapiet v The Secretary of State for India*, 39 C.L J. 209 (211) 81 I C 751: 1924 A.I R 987 (Cal).

Crown must bring a case within the letter of law—There cannot be any equitable construction of a fiscal statute and the Crown seeking to recover a tax must bring it with the letter of law, otherwise the subject is free, *Killing Valley Tea Company, Ltd. v. Secretary of State for India in Council*, 32 C.L J. 425 (432); *Deputy Commissioner of Singbhum v. Jagadish Chandra*, 62 I.C. 513: 6 Pat L J. 411; Per Das J. in *Krishna Mohan Sinha v. Raghunandan Pandey*, 1925 Pat C.W.N. 65 (88) F.B.: 4 Patna 336: 1925 A I R 392 (P.): 87 I.C. 137.

Resonableness of the provisions—The provisions of a statute enacted for the purpose of revenue should not be examined as to their reasonableness in all eventualities, *Deonandan Misra v. Ganga Prasad and others*, 8 Patna 906: 10 P.L.T. 622: 120 I.C. 313: 1929 A I.R. 731 (Patna).

In cases of doubt—Where there is doubt in the matter, a Court is bound to decide the matter in favour of the subject as

the subject cannot be taxed except by clear and unambiguous language, *Anonymous Case*, 10 Cal 274 (282) per Field J, *Dayachand* v *Hem Chand Dharam Chand*, 4 Bom 515 F B.; *The Deputy Commissioner of Singhbhum* v. *Jagadish Chandra Deo*, 6 Pat L J 411 · 62 I C 513.

Practice of Court.—In the Full Bench of *Kisory Lal Ray Ray* v *Sharat Chandra Majumdar*, 8 Cal 593 (597), Sir Richard Garth C J, said "There is a very wholesome maxim of law *optimus legis interpres consuetudo*, and Mr. Broome in his work on Legal Maxims, 2nd Edition, p 534, says this.—where a statute uses language of doubtful import, the acting under it for a long term of years may well give it an interpretation to that obscure meaning, and reduce that uncertainty to a fixed rule

And I take it, that this principle is especially applicable, where the subject of interpretation is a matter of every day occurrence And when we find that for a series of 8 or 10 years, a law which imposes a heavy tax upon litigation has received a particular interpretation in favour of the suitor, and a course of practice has prevailed for years, throughout the whole country, in accordance with that interpretation, I think that any Court of Justice ought to be slow in changing that interpretation or course of practice to the prejudice of the suitor, unless it sees clear and weighty reasons for so doing" See also *Ijjatulla Bhuiya* v *Chandra Mohan Banerjee*, 34 Cal. 945: 11 C.W.N 1133: 6 C L.J 235 F B ; *Bidhata Ray* v. *Ram Charitra Ray*, 12 C W N 37. 6 C L J 651; *Dowlat Ram* v. *Vitho*, 5 Bom 188 (193)

In *Baleswar* v *Bhagirathi*, 35 Cal 701 (713): 12 C W.N 657 · 7 C L J 563 the Court held. "It is a well settled principle of interpretation that Courts in construing a Statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it. I do not suggest for a moment that such interpretation has by any means a controlling effect upon the Courts, such interpretation, may, if occasion arises, has to be disregarded for cogent and persuasive reasons, and in a clear case of error, a Court would without hesitation refuse to follow such construction" See also the case of *Corporation of Calcutta* v. *Binoy Krishna Bose*, 12 C.L J. 476: 15 C.W.N. 34; *Mathura Mohan* v. *Ram Kumar*, 43 Cal 790 (810): 23 C.L.J. 26: 20 C.W.N 370: 35 I C 305. A Court cannot override the plain language of the statute except upon reference to its general tenor and spirit and the argument must be convincing, *Mahade Aon* v. *Chairman of the Howrah Municipality*, 11 C.L.J. 5 The Courts always hesitate to over-rule decisions which a

The above observation is applicable only to cases if a language of the statute be of doubtful import and a practice which is in contravention of the law, even if such practice be the practice of the High Court, cannot make lawful that which is unlawful nor can a practice of Court justify a Court in putting upon an Act of the Legislature a construction which is contrary to the plain wording of the Act," *Bunwarilal v. Daya Sanker Misser*, 13 C W N 815 (821); *Khedu Mahato v. Budhan Mahato*, 27 Cal 508 (511-512).

Conduct of Revenue Authorities—Interpretation which has long been acted upon cannot be disregarded by a Court of law and the Court should put upon it the construction first placed upon it when it came into force; but the conduct of the revenue authorities in the past does not bind the Court, *Killing Valley Tea Company v. Secretary of State for India in Council*, 32 C L J 421 (431, 432) See also *Bidhata Ray v. Ram Charitar Ray*, 12 C W N 37 (42); 6 C L J. 651 (657); *Kisori Lal Ray v. Sarat Chandra Majumdar*, 8 Cal. 593

Where sections are reproduced—Where the sections of the former Act are reproduced in the later Act, the inference is that the construction put upon the provision of the former Act by Courts is adopted and affirmed by legislature, *Protap v. Sarat* 33 C L J 201, *Jogendra v Shyam*, 36 Cal 543: 9 C.L J 271 followed See also *Kalyandappa v Chanbasappa*, 28 C W.N 666 P C 51 I A 220 48 Bom 411. 22 A L J. 508: 46 M L J 598: 1924 M W N 414: 20 L W. 109: 10 O.L J. 181: 79 I.C 971: 1924 A I R. 137 (P.C)

Where the Act is repealed—The general rule is that a repealed statute cannot be acted on after it is repealed, but that with regard to all matters that have taken place under it before its repeal, they remain valid, *R v. Denton*, 21 L J.M.C. 208. See ss. 6 and 7 of the General Clauses Act (Act X of 1897).

Effect of repeal of a repealing Act—When a repealing Act is subsequently repealed by another Act, the last repeal does *not revive* the former Act or its provisions, unless there are words reviving them *In re Jawa Nathoo and other*, 44 Cal 459; *Hari Mohadeji Savarkar v. Balambhat Raghunath Khare* 9 Bom. 233; *Deputy Legal Remembrancer v. Ahmad Ali*, 25 Cal 333: 2 C.W N. 11. See also s. 7 of the General Clauses Act (Act X of 1897).

Retrospective effect—It is not in accordance with sound principles of interpretation of statute to give them a retro

Proceedings on insufficiently stamped document not void. —Order 7, rule 11, C P C. read with s 28 of the Court Fees Act clearly implies that opportunity is to be given to the party concerned to pay proper stamp and it is his failure to do so that the Court is entitled to decline to look at the document; but it cannot be said that if the Court accepts an insufficiently stamped document the proceedings which follow thereon are void, *Musst Jintan* v *Ahmad and another*, 106 I C 817: 1928 A.I.R 221 (Lahore) An insufficiently stamped plaint is not a nullity, *Faizulla Khan* v *Mauladad Khan*, 56 I A 232, 10 Lah. 737: 33 C W N 781: 50 C L J 39 31 Bom L R 841: 57 M.L J. 281: 1929 M W N 818 30 L W 104, 117 I C 493: 1929 A.I R. 147 P.C

Dispute as to the amount of court-fees payable.—In cases of dispute as to the amount of court-fees payable the Court is to frame an issue on the point and proceed to try that issue first or determine it at the time of the disposal of the suit along with other issues, *Ganga Prosad* v. *Bhawani Sheikh*, 62 Ind Cas 853 (Oudh).

Effect of decision of Court—When a plea of insufficiency is taken all that the Court is to do, is to see whether the court-fee paid already is sufficient having regard to the various allegations in the plaint and in doing so does not decide that those allegations are true, *Lalta Prasad* v *Barmha Din*, 30 Ind. Cas 73

Question as to court-fees to be dealt with at the earliest posible moment, see under s 10, *infra*

Admission by party as to court-fees payable—A party is not concluded by statements by him or those who come in as plaintiffs afterwards as to the amount of court-fees payable, as the question is not one of fact but is one of law, *Girish Chandra Sanyal* v *The Secretary of State for India in Council*, 105 I C. 80: 1927 A I.R. 55 (Calcutta).

Admission by Counsel.—An admission by Counsel as to the amount of court-fees payable being an admission on a point of law, is not binding on the client, *Surain Singh* v *Sundar Singh and others*, 120 I.C. 532: 1929 A I R 879 (Lah.).

Deficiency of court-fees not raised in the trial Court.—Where the deficiency of court-fees was not objected to in the first Court by defendant before the decision of the suit, such plea could not be raised for the first time in appeal, *Wilayat* v. *Umardaraz Ali Khan*, 19 All 165 Where defendant did not raise the question of court-fees and valuation in the written statement, the Judicial Committee of the Privy Council declined to entertain the objection on appeal as to the jurisdiction of the trial Court and observed that the same should not have been

allowed to be taken in appeal, and that the Court Fees Act was not passed to arm a litigant with a weapon of technicality against his opponent, but to secure revenue for the benefit of the state ....And a judgment not shown to have been wrongly decided to the detriment of revenue cannot be set aside at the instance of a party on the ground of jurisdiction, *Rachapa Subrao Jadhav Desai* v *Shidappa Venkatrao*, 24 C W N. 33: 29 C L J 452 50 Ind Cas 280 43 Bom 507 21 Bom L R 459: 17 A L J 418 25 M L T 298: 36 M L J 437 P C

Question as to court-fees not raised in the Lower Appellate Court, not allowed to be taken in second appeal, see *Ram Kishen* v *Dipa*, 13 All 580, *Ahmad Ali* v *Waris Hossain*, 15 All 123, *Wilayat Ali* v *Umardaraz Ali*, 19 All 165, *Ranga Pai* v *Baba*, 20 Mad 398, *Sharan Bibi* v *Earsin Dewan*, 16 Ind Cas 46, but see *contra*, *Kasturi Chetty* v *Deputy Collector, Bellary*, 21 Mad 269

Effect of acceptance of decision by the trial Court—Where the defendant had accepted the decision of the trial Court as to the amount of court-fees payable and had stamped his own appeal to the lower appellate Court in the same way, he is precluded from raising the question of court-fees again in the High Court, *Chunnu Lal* v *The Bank of Upper India*, 106 P W R 1917 40 I C 904; but the fact that a certain sum was put in in compliance with the order of Court, did not preclude the plaintiff from afterwards disputing the decision of the Court in appeal, *Mani Lal* v *Durga Prasad*, 3 Pat 930 80 I.C 667: 1924 A I R 673 (P): 5 Pat L T 425: 1924 Pat C W.N. 254

See also section 11 of the Suits Valuation Act (Act VII of 1887) where the circumstances under which the Courts are to take such questions into consideration are specified

Effect of Registration—The mere fact that the plaint or memorandum of appeal has been registered does not prevent the question as to sufficiency of court-fees being raised at a later stage, *Radha Kanta Saha* v. *Debendra Narain Saha*, 49 Cal. 880: 27 C.W.N. 567: 1922 A I R. 506 (Calcutta): 38 C L J. 74: 70 Ind Cas. 101.

Return of Plaint.—By the C. P. C. (Act XIV of 1882), s 21, it is enacted that on representation of a plaint court-fees are not to be levied but there is no such corresponding section in Act V of 1908.

Whenever a Court, after a trial has begun or even after it has been concluded, thinks it has no jurisdiction to try the suit and returns the plaint for presentation to the proper Court, no fresh court-fees are chargeable on presentation to such Court,

Proceedings on insufficiently stamped document not void. —Order 7, rule 11, C P C read with s 28 of the Court Fees Act clearly implies that opportunity is to be given to the party concerned to pay proper stamp and it is his failure to do so that the Court is entitled to decline to look at the document; but it cannot be said that if the Court accepts an insufficiently stamped document the proceedings which follow thereon are void, *Musst. Jiwan v Ahmad and another*, 106 I C. 817: 1928 A.I.R. 221 (Lahore) An insufficiently stamped plaint is not a nullity, *Faizulla Khan v Mauladad Khan*, 56 I A 232: 10 Lah. 737: 33 C W N 781 50 C L J 39: 31 Bom L R 841: 57 M.L.J. 281: 1929 M W.N 818 30 L.W 104 117 I.C 493: 1929 A I R. 147 P C

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allowed to be taken in appeal, and that the Court Fees Act was not passed to arm a litigant with a weapon of technicality against his opponent, but to secure revenue for the benefit of the state . . . . . . .And a judgment not shown to have been wrongly decided to the detriment of revenue cannot be set aside at the instance of a party on the ground of jurisdiction, *Rachapa Subrao Jadhav Desai* v *Shidappa Venkatrao*, 24 C W N. 33: 29 C L.J. 452 50 Ind Cas 280: 43 Bom 507: 21 Bom L R. 459: 17 A L J 418: 25 M L T 298· 36 M L J. 437 P C

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Return of Plaint.—By the C. P. C. (Act XIV of 1882), s. 21, it is enacted that on representation of a plaint court-fees are not to be levied but there is no such corresponding section in Act V of 1908.

Whenever a Court, after a trial has begun or even after it has been concluded, thinks it has no jurisdiction to try the suit and returns the plaint for presentation to the proper Court, no fresh court-fees are chargeable on presentation to such Court,

tion as to stamp was taken by the Court to which it was first presented, *Lachmi Prasad* v. *Secretary of State for India*, 11 P.L.T. 711: 1931 A I R. 39 (Patna).

Court returning the plaint need not order the value to be amended or pay additional court-fee, *Ramanna* v *Amreddi*, 61 M.L J. 43: 34 L W. 352: 129 I C. 826 1931 A L R 57 (Mad): 1931 I R. 346 (Mad).

"By Revenue Court"—When a Settlement Officer, before whom a suit was instituted without court-fees under section 8 of Santhal Pargannah Regulations (Reg III of 1872), returns the plaint under section 5 of that Regulation to be presented to the Civil Court, no institution court-fee can be demanded by the Civil Courts, *Bibee Golap Kumari* v *Md Kadiruddin*, 12 C.W.N. 917

But see *contra*, *Gandaram* v *Sain*, 132 P R 1892, where the plaintiff brought a fresh suit on the point in a Civil Court

Filed.—The word "filed" means something more than "presented" for admission. It means that the document has been admitted and put on the files of the Court, *Amjad Ali* v. *Muhammad Ismail*, 20 All. 11 (17), *Moti Sahu* v *Chhatri Das*, 19 Cal. 780

Sec 6 of the Court Fees Act is imperative It requires that in all Courts except in the High Courts in the exercise of their original jurisdiction and in the Presidency Small Cause Court, no document of any of the kinds specified as chargeable in Schedules 1 and 2 to that Act, shall be filed, exhibited or recorded or shall be received or furnished by any public officer unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document, *Adamali* v *Abdul Ali and another*, 107 I C 223. 1928 A I R 87 (Sind)

Plaint.—*Plaint not bearing proper stamp*

Calcutta High Court—When a plaint is presented bearing insufficient stamp but the deficiency is made up within the time allowed, the plaint is to be considered as presented in time, *Moti Sahu* v. *Chhatri Das*, 19 Cal 780, *Padmananda* v *Ananta Lal*, 34 Cal 20 F B : 11 C W N 38: 4 C L J 422

C P—A plaint filed with insufficient stamp would be filed in time, even if the deficient court-fee is supplied after the period of limitation but the deficiency should be made good with the sanction of the Court See *Mahomed Galif* v *Abdul Rahim, Receiver*, 89 I C. 419 1926 A I R 156 (Nag)

Madras High Court—A suit is not instituted within the meaning of the explanation to section 4 of the Limitation Act by presentation of a document purporting to be a plaint, if that

Provakar v. *Vishwambar*, 8 Bom 313; *Gandu* v. *Konda*, 8 M
62; see *contra Jagjiban* v. *Magdum*, 7 Bom. 427.

In a suit for an account the usual valuation for purp of court-fees was made in the plaint, which was filed and ceived in a Munsiff's Court. The Munsiff appointed a c missioner to take an account and the result was that plai was found by the commissioner to be entitled to a much lar sum Plaintiff then applied for leave to amend the pla which was granted, and the valuation of the suit was acco ingly increased As the amount claimed in the amended pla was greater than that over which the Court of a Munsiff or narily has jurisdiction, the Munsiff ordered the plaint to returned for presentation to the proper Court: *held*, that t Munsiff had acted with material irregularity in permitting t valuation of the suit to be revised; and that he ought to ha tried the case, *Arogya Udayan* v *Appachi Rowthan*, 25 Ma 543: 12 M L J 35

A plaintiff when the plaint was returned to him, to pa additional court-fees, can reduce the value so as to make th court-fee already paid sufficient for the plaint and represent i to the Court which returned it and that Court will then accept it, *Neelachalam* v *Narsing Das*, 34 L.W. 252: 1931 M.W.N. 677 134 I C 816 1931 A I R 716 (Mad): 1931 I R. 864 (Mad).

Court-fees already paid to be credited—When the plaint which has been returned is presented in a Court of competent jurisdiction, the suit, even for the purposes of court-fee on such plaint should be leviable under the law which was in force at the time when the plaint was originally presented. If the court-fee has increased in the meantime the plaintiff must be credited with the court-fee originally paid, *Bimala Prasad* v. *Lal Mom* 1926 A I R 355 (Cal) 30 C W N 90: 91 I C 862.

Where a Court after receiving a plaint and cancelling th stamp affixed thereto returns the plaint for presentation to th proper Court under Order 7, rule 10 of the Code of Civil Proce dure, 1908, the latter Court to which the plaint is presented i bound to give credit to the fee already levied by the forme Court, *Ganesh Tavanappa Burde* v *Tatya Bharmappa Mirji*, 5 Bom 236 29 Bom L R 280. 101 I C 343: 1927 A.I.R 25 (Mad) See also *Visweswara Sarma* v *Dr. J. N. Nair*, 35 Mac 567: 21 M L J 533 10 M L.T 29: 10 I.C. 201.

Court returning the plaint need not determine sufficiency o court-fees—If an insufficiently stamped plaint is returned by Court on the ground of its want of jurisdiction and then pr sented to a Court having jurisdiction, the latter Court is n bound to treat the plaint as sufficiently stamped even though may never have been properly stamped merely because no obje

Calcutta High Court—Date of institution of suit should be reckoned from the date when the plaint was presented and not from the time when the deficiency in court-fees was made good, *Moti Sahu* v. *Chhatri Das*, 19 Cal 780 (782), where the reasons are given A suit was brought *forma pauperis* on behalf of a minor but the suit was dismissed by the Munsiff under an alleged compromise An appeal was filed before the District Judge but the memorandum was insufficiently stamped and an application was filed to prosecute the appeal *forma pauperis.* At the time of hearing of the application, objection was taken that the minor has inherited certain properties whereon the guardian offered to pay court-fees. The appeal Court allowed the guardian to put in court-fees and admitted the appeal The court-fees were paid within the time allowed Held that the case came within either section 5 of the Limitation Act or Section 582A, C. P. C and the appeal is not out of time, *Durga Charan Nuskar* v. *Dookhiram Nuskar*, 26 Cal 925.

When the plaint is engrossed on a paper not duly stamped but is accompanied by an amount of money sufficient to cover stamp duty, it was held that the plaint was properly stamped, *Govind Kumar Choudhury* v *Har Dayal Nag*, 3 B L R. App. 72 But under the present Act, cash money cannot be accepted, see section 25 of the Court Fees Act.

In the following cases deficit court-fees were paid within the time and the plaint was deemed as if presented in time, *Hari Mohan* v. *Naimuddin*, 20 Cal 41, *Surendra Kumar* v. *Kunj Behary*, 27 Cal. 814: 4 C.W.N 818; *Rajkisori* v. *Madan Mohan*, 31 Cal 75; *Habibul* v. *Mahammad Reza*, 8 Cal. 192, where it was further held that a plaint cannot be rejected after registration under section 54 of the Code of Civil Procedure (Act XIV of 1882, & Or. 7 r. 11 of the present Act) unless time is given to make up the deficiency.

See also *Bhut Nath* v. *Chandra Binode*, 16 C.L J. 34, where the plaintiff was permitted to convert an application for damages into a plaint in a suit for damages upon payment of *ad valorem* court-fees.

Central Province (Nagpur).—Where a plaint is presented on paper insufficiently stamped within the prescribed period of limitation and time is given by the Court to the plaintiff to make good the deficiency, which is supplied within the time allowed by the Court, but after the expiry of the period of limitation, the suit is not barred, *Mahomed Galif* v. *Abdul Rahim*, 89 I C. 419: 1926 A I R. 156 (Nag.).

Madras High Court—See *Valambal Ammal* v. *Vythilinga*, 25 Mad. 380. See *Gavaranga Sahu* v. *Batokrishna Patro*, 32

Mad. 305: 19 M.L.J. 340: 4 I.C. 503 F.B.; *Nallavadiva Ammal* v *Inbramavia Pillai,* 40 Mad 587.

Patna High Court—Where the plaint was presented on the last day of limitation with insufficient court-fees and the balance being paid after limitation, it was registered—held that the suit is not barred, *Gaya Loan Office, Ltd* v *Audh Behari Lall,* 1 Pat.L.J. 420: 3 P.L.W. 51: 37 I.C. 507

Judicial Committee—A memorandum of appeal duly presented to and accepted by the Court, even if the valuation be unsatisfactory and in the end insufficient, is validated by additional payment of court-fees, the result being that the memorandum stands good from the date of presentation. The memorandum is not a nullity, *Faizullah Khan* v *Mauladad Khan,* L.R. 56 I.A. 232: 10 Lah 737: 31 Bom L.R. 481: 33 C.W.N. 781: 50 C.L.J. 39: 57 M.L.J. 281: 1929 M.W.N. 818: 117 I.C. 493: 1929 A.I.R. 147 P.C.

Limitation—Once a Court has accepted payment of deficit on a memorandum of appeal, no further question of limitation arises. A Court cannot permit the deficiency to be made up and then hold that the appeal is barred by limitation, *Jawala Singh* v *Musst Dhano,* 133 I.C. 122: 1931 I.R. 746 (Lahore), *Durga Charan Naskar* v *Dookhiram Naskar,* 26 Cal 925 above

An appeal was filed on the last day of limitation with insufficient court-fees. The deficit was supplied subsequently (out of time) and the Court ordered the deficit court-fees so paid to be accepted. The appeal was then heard and admitted under Or 41, Rule 11, C. P. C. and then posted for final hearing. A question was then raised whether the appeal was a valid appeal. The High Court held that such a question could not be raised at that stage, *Musst Choti* v *Hardayal Singh,* 1933 A.I.R. 572 (All.) 1933 A.L.J. 1357: 146 I.C. 753

Court's power to grant extension of time, S. 149, C. P. C. —Under the present Act, the power is exercised under sections 148 and 149 of the Code of Civil Procedure (Act V of 1908). The principle to be looked to is whether there is a *bona fide* mistake on the part of the plaintiff or the appellant

A Court has power to grant extension of time originally fixed to put in deficit court-fees after the expiry of the original period, *Dewan Amir Hossain* v *Nanak Chand,* 12 C.L.J. 62. 14 C.W.N. 882: 6 Ind. Cas 424, see also *Surendra Prasad* v. *Aftafuddin Ahmed,* 26 C.W.N. 391: 70 I.C. 43 where extension of time was granted after the dismissal order for non-payment of court-fees was set aside on review, *Bhagwan Das* v. *Abu Ahmed,* 15 Bom 263

In the following cases plaint was filed with insufficient stamp and it was held that the Court can grant an extension of

time and on the deficiency being made up, the plaint was regarded as if filed in time, *Brahmomoyi* v. *Andi*, 27 Cal 376; *Shib Krishna Dawn & Co* v. *Satis Chandra*, 38 Cal 522; *Karman* v. *Cockell*, 1 C W N. 670; *Bidhata* v *Ram Charita*, 12 C W N. 37 (43): 6 C L.J. 651; *Hem Chandra* v. *Doorga Pada*, 3 Ind. Cas 435; *Kishore* v. *Sabdal*, 12 All. 553; *Hari Ram* v *Akbar Hussain*, 29 All. 749 (case of a mistake in payment of court-fees); *Govaranga* v *Boto Krishna and others*, 32 Mad 305 · 19 M.L.J. 340: 4 Ind. Cas. 503

When an appeal was filed in time but was insufficiently stamped and on the deficiency being pointed out to the appellant by the office, he disputed the report and did not make up the deficiency till long after the appeal was barred by time, held he could not get an extension of time, *Wadhawa Singh* v *Sunder Singh*, 21 P W R 1921 59 I C 689

Time for payment of deficit court-fees should not be extended unless there is a *bona fide* mistake *Lekh Ram* v *Ramji*, 1 Lah 234: 3 L L J 370 57 I C 215, *Umed Ali* v *Municipal Committee, Jhang Maghiana*, I L R 2 Lah 1 2 L L J 486 · 8 P W R 1920 · 56 I C 143 1922 A I R 233 (Lah) See also *Fatteh Singh* v *Babu Ram*, 67 I C 130, *Puran Chand and others* v *Emperor and others*, 1926 A I R 343 (Lah), 92 I C 991: *J C Gaulstun* v *Kumar Pramatha Nath Ray*, 33 C W N 883 1929 A I R 470 (Cal) The Court may refuse to extend the time if the law is clear and there is no *bona fide* mistake, *Mahomed Suleman* v *Ghumandilal*, 32 P L R 251 134 I C 127 1931 A I R 343 (Lah) 1931 I R 895 (Lah)

Section 149, C P C must not be so construed as to nullify the provisions of section 4 of the Court Fees Act, hence if the appellant deliberately and to suit his own convenience pays insufficient court-fees on his appeal the Court is not bound to receive the same and extend the time, *Ram Sahay Ram Pandey* v *Kumar Lakshmi Narayan Singh*, (1917) 3 P L J 47 · 5 P L W 18: 42 I.C 675; *Tikan Ram* v *Bosa Ram*, 67 I C 106, *Singasan* v *Gaya Tewari*, 1935 A I R 201 (Pat)

Court has power to extend the time allowed under the Limitation Act for supplying Court Fee Stamp, *Adamali* v. *Abdul Ali and another*, 107 I.C 223: 1928 A I R 87 (Sind)

The discretion extends to the whole or any part of any fee prescribed and can be exercised at any stage in the case, while finally, upon the extra payment being made, the document is to have the same effect as if it had been paid in the first instance, *Faizullah Khan* v. *Mauladad Khan*, L R 56 I A 232 · 10 Lah. 737: 33 C.W.N. 781: 50 C L J. 39: 31 Bom L R 841: 57 M L J. 281: 1929 M.W.N. 818: 117 I C. 493: 1929 A.I R. 147 P.C.

In *Ahmad Kasimullah* v. *Khatum Bibi*, (1931) 59 Cal. 833 (837) the Calcutta High Court allowed additional court-fees to be put during the progress of the suit

Where the plaintiff was unable to purchase court-fees owing to the fact that the supply was exhausted in the local collectorate and the plaint was therefore presented with deficit court-fees, it was held that the plaint must be deemed to have been presented at the proper time, *Mahomed Safi Muhammad Ayub* v. *Delhi House of Multan*, 1928 A I R 274 (Lah).

The Court has power under s. 149, C. P C. to grant time for payment of the deficit court-fee at any time, either before or after the registration of the plaint and even after the expiry of the period of limitation The propriety of the discretion exercised by the Court under that section cannot be challenged in revision, *Mahomed Galif* v *Abdul Rahim, Receiver*, 89 I C. 419: 1926 A.I.R 156 (Nag).

An appeal cannot be filed with insufficient court-fees with the knowledge that it is insufficient. The discretion allowed under s. 149 of the Code of Civil Procedure can be exercised only when there is a *bona fide* mistake or a *bona fide* misunderstanding of the law as to valuation and cannot include a case where the appellants never cared to find out the proper amount of court-fees they had to pay on their memorandum of appeal, *Patil Shyamlal* v *Gourishankar*, 119 I C. 700 1929 A I R. 294 (N)

In *Brijbhukan* v *Tota Ram*, 50 All 980: 26 A L J 199: 118 I.C 228 1929 A I R 75 (All) the Allahabad High Court remarked on the objectionable practice of filing of an appeal on the last day of limitation with an obviously insufficient stamp, but it was held in *Jagannath* v *Ramgopal*, 1934 A I R. 160 (All.): 1934 A L J 533. 147 I C. 342, that if the Court orders payment of court-fees and grants two days' time to put in the deficit then such extension of time cannot be revised and the plaint is to be deemed as sufficiently stamped in the 1st instance

Receiving a memorandum of appeal presented with a court-fee of Re 1, which was on the face of it insufficient is without jurisdiction The provisions of s 149 are intended to apply to cases of *bona fide* mistakes in valuation and not to cases where a party consciously and intentionally puts insufficient court-fee on a document in an attempt to avoid the law of limitation, *Jnanada Sundari Saha* v. *Madhab Chandra Mala*, (1931) 59 Cal. 388 (392); *Akkaraju Narayana* v. *Akkaraju Sheshamma*, (1914) 27 M L J. 677 In *re Sm Khatumunnessa Bibi*, 61 Cal. 663: 38 C.W.N. 650: 1934 A.I.R. 659 (Cal.) some extension of time was granted

But in *Achut Ram Chandra* v. *Nagappa Bab Balgya*, (1913)

38 Bom. 41: 15 Bom L R. 902: 21 I.C 337, a memorandum of appeal was presented with a court-fee of 8 annas while the requisite court-fee was Rs. 205, but the Bombay High Court held that under Or. 7, rule 11 (c), the plaint shall be rejected only if the plaintiff on being required by the Court *to supply the requisite* court-fee within a time to be fixed by the Court fails to do so The appellate Court is to exercise the same power under s 107 (2) of the Code of Civil Procedure Therefore rejection of the *memorandum of appeal without grant of time* was bad.

Pauper applications—An application to sue as a pauper was accompanied by an unstamped plaint and the Court held that it can under the powers vested in it by s 149 of the Code of Civil Procedure permit the requisite stamp to be paid thereon within a time fixed by it and after that has been done the unstamped plaint will be considered to have been validly presented on proper stamp duty on the date on which it was originally filed, *Bank of Bihar Ltd v. Sri Thakur Ram Chowdhury and others*, 9 Patna 439: 11 P L T 55 1929 A I R 637 (P) 118 I C 329 See also *Doorga Charan Naskar v. Dookhiram Naskar*, 26 Cal 925; *Skinner v. Orde*, L R 6 I A 126: 2 All 241: 4 C L R 331; *Maria Thangammal v. Iravatheswara Ayer*, 1915 M W N. 228, where the High Court held that if a Court admits and registers a plaint by a pauper plaintiff on payment of court-fees, it must be taken to have extended the time, an application for that purpose is not necessary

Contra—See *Sook Lal v. Dalchand and others*, (1923) 1 Ran 196: 74 I C 835 1923 A I R 256 (Ran) where the court-fees were paid after limitation on rejection of the application to extend the time.

Facts must be brought to the notice of the Court.—When a party puts in requisite court-fees after the expiry of time and the appeal was registered, that is not an enlargement of time as an application is necessary and the facts must be brought to the notice of the Court The Registrar of the Court of Small Causes cannot grant extension of time under section 148 of the Code of Civil Procedure (Act V of 1908), *Budhan Shah v. Sitarath*, 13 C L J 78: 7 Ind Cas 578, *Farjand Ali v. Abdul Hamid*, 60 I C 493; but see *Pawan Kumar Chand v. Dulari Kuar*, 5 P.L J 544: 1 P.L.T. 544: 58 I C 216, where it was held that no express orders being necessary, registration of appeal on payment of court-fees after the expiry of the period fixed is *implied extension of time*

Extension of time after signing the decree—If it be provided in a decree that if the court-fees are paid within one month then the appeal will be allowed otherwise it will be dismissed, then the time limited by it cannot be extended by the

successor-in-office of the judge who signed the decree, *Nawab Khajeh Habibullah* v *Sm Gota Asmater Khatun and others*, 27 C W N 720: 37 C L J 395: 74 I C 575: 1923 A I R. 612 (Cal).

The Court is to exercise discretion—In *Jai Singh* v. *Sita Ram*, 21 A L J 333 · 74 I C 757: 1929 A I R 349 (All.) it was held that a learned judge has no right to reject an appeal for insufficiency of stamp without exercising any discretion in the matter

Negligence of Counsel—Where the appellant's counsel obviously acted with gross negligence in valuing the appeal, the delay in making good the deficiency that occurred in consequence of sheer negligence cannot be condoned, *Gursarandas* v. *District Board, Jullunder District, etc*, 102 I.C. 615: 9 L L J. 290: 28 Punj L R 338 See *Ram Labhaya* v *Vaid Prakash*, 1934 A I.R. 414 (Lah), where the attention of the counsel was drawn to the fact of the insufficiency but the counsel did not supply the deficiency and the time was not extended

Misconduct of a pleader's clerk—Where the plaintiff handed over the deficit court fees to the pleader's clerk to be paid into Court, but the clerk instead of paying the same into Court misappropriated it, and filed an application for extension of time, which the Court rejected, the plaintiff on hearing this filed an application for setting aside the order of rejection, which was dismissed, *held* that the application by the plaintiff is an application to extend the time and that under the circumstances of the case as the plaintiff did everything and did pay the amount to the pleader's clerk time should be extended, *Adit Prasad Singh* v. *Ramharakh Ahir*, I.L R. 4 Patna 180: 1925 Pat C.W N. 147: 91 I C. 213: 1925 A.I R. 435 (Pat.).

Calculation of time.—Where deficit court-fees were ordered to be paid within a week, the date of the order is to be excluded in computing the week allowed to put in the deficit court-fees, *Gopal* v. *Bahorni*, 15 C.L J 120. Where the order was to supply the deficit court-fees within a month, otherwise the appeal will stand dismissed, but the last day of the time allowed fell on a holiday and the court-fees were supplied on the re-opening date, held that the court-fees were supplied in time, *Amir Mondal* v. *Mohan Chandra*, I.L R. 3 Pat. 337: 80 I C. 1930: 1924 A I.R. 663 (Patna)

Admission of appeal—Subject to objection—An order of appeal Court excusing delay in payment of court-fees on a memorandum of appeal, is according to the practice of the Madras High Court, made subject to objection at the hearing, *Acharath Parakhat* v. *Acharath Bappu*, 23 Ind. Cas. 949.

38 Bom 41: 15 Bom L R. 902: 21 I C 337, a memorandum of appeal was presented with a court -fee of 8 annas while the requisite court-fee was Rs. 205, but the Bombay High Court held that under Or. 7, rule 11 (c), the plaint shall be rejected only if the plaintiff on being required by the Court to supply the requisite court-fee within a time to be fixed by the Court fails to do so The appellate Court is to exercise the same power under s. 107 (2) of the Code of Civil Procedure Therefore rejection of the memorandum of appeal without grant of time was bad

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allowed to prejudice the substantial rights of the party in favour of whose opponent the amendment is allowed and if the party applying is acting *malafide* or by his blunder has done some injury to his opponent which cannot be compensated for by costs or otherwise, *Mani Lal* v *Harendra Lal,* 12 C L J. 556 The Court allowed amendment by insertion of another prayer in the following cases: *Bai Anope* v *Mulchand Girdhar,* 9 Bom. 353 (insertion of a prayer for accounts); *Sardar Singhji* v. *Ganpat Singhji,* 14 Bom 395 (prayer for injunction inserted); *Abulkadar* v *Mahomed,* 15 Mad 15, (prayer for possession inserted).

But where the objection is not taken for the first time in appeal and the plaintiff elected to take an issue and to allow the suit to proceed subject to the risk of an adverse decision, the Court refused to allow amendments, *Narayana* v. *Shankunni,* 15 Mad 255 Where the plaintiff had an opportunity but did not avail himself of it, the Court refused to allow amendment, *Raj Narayan* v *Shama Nanda,* 26 Cal 845 Where the plaintiff has put a *bona fide* valuation on his claim, he cannot afterwards be allowed to alter the valuation, especially if the effect of such valuation be to oust the jurisdiction of the Court; but such *bona fide* valuation would not affect the plaintiff's rights to recover a larger amount if such amount be, on enquiry, found due to the plaintiff, *Arogya* v *Appachi,* 25 Mad 453 · 14 M L J 35 The proper valuation in the case of an amended plaint is that ascertained at the date of the original filing of plaint, *Moro Biswanath* v *Ganesh Vithal,* 10 Bom H C A C 444, *Khelat Chunder* v *Nasseebunnissa,* 16 W R 47

When an application is allowed to be *amended* so as to convert it into a plaint and proper court-fees paid thereon, the plaint was held to have been presented on the date when the application was presented, *Bhutnath* v. *Chandra Binode,* 16 C L.J. 34

But mere payment of court-fees without actually amending the plaint is not amendment of the plaint, *Rebati Raman Basak* v. *Harish Chandra Basak,* 24 C W N 749

Amendment of valuation.—*Power of Appeal Court*— Appeal Court cannot give option to the plaintiff to limit his claim to the extent of court-fees paid, *Valli Ise Amanji* v. *Mahmad Adam,* 16 Bom L R 763 26 Ind Cas 746. The Chief Court (Burma) refused to allow amendment of the valuation, so as to bring the valution within the jurisdiction of the Chief Court, *Thein Yin* v. *Foucar Brothers Co Ltd,* 4 L B R. 120; but if the plaintiff at the initial stage of suit abandons a portion of his claim, he cannot be compelled to pay court-fees upon that claim under the penalty of having his whole claim dismissed, *Ram Prosad* v. *Bhiman,* 27 All. 151: 24 A W N 198:

1 A.L J. 577. The Punjab Chief Court allowed the Defendant-Appelant, who had filed an appeal insufficiently stamped, to abandon a part of his claim in appeal and to restrict the dispute to the amount on which he paid court-fees, *Dunni Chand* v. *Abdul Aziz*, 131 P L R. 1911· 10 Ind Cas 207. 11 P R 1912.

Where a suit was framed as a suit for declaration but was found in the appeal Court as one coming under s 7 IV (c) of the Court Fees Act, the appeal Court refused to allow amendment as there is no allegation that a fresh suit would be barred. *Hakim Rai* v *Firm Ishar Das—Gurkhi Rai and others*, I L R. 8 Lahore 521. 9 L.L J. 400: 102 I C 46: 1927 A I R 499 (Lahore).

See also other cases under heading 'Reduction of claim' under Sch I, Art 1, *infra*

Suit by paupers.—See Or XXXIII, rr 8, 10, 11 and 12 of the Code of Civil Procedure (Act V of 1908)

For Pauper appeals—See Or XLIV of the Code of Civil Procedure (Act V of 1908).

Assessment of court-fees.—If a plaintiff succeeds in his suit instituted *forma pauperis* then the assessment is to be made on the value of the properties at the date of the application for permission to sue in *forma pauperis* and not at the disposal of the suit, although the value of the property may have decreased during the pendency of the suit, *Abubakar Tarmahomed* v *Fatma Bai*, 27 S L R 240: 1933 A I R 354 (Sind) See also *Kaman Mada* v *Mullai*, 91 I.C 302 1926 A I R 159 (Mad)

As to procedure after the application is admitted—See Or XXXIII, r. 8; all court-fees in respect of the suit are excused but not fees in respect of service of processes

In case the full court-fee is paid subsequently either during the pendency of the enquiry into pauperism or after the rejection of the petition to sue as pauper but within time allowed to pay the court-fees, the suit is to be considered as instituted on the day the petition to sue as pauper was presented, *Skinner* v *Orde*, 2 All. 241: L R 6 I A 126. 4 C L R 331; *Janakdhary* v *Janki*, 28 Cal 427, *Swan Tee* v *Ma Ngwe*, 9 Bur L T 69 32 Ind. Cas 630; *Jamnabai* v *Visson das*, 21 Bom 576; *Bai Ful* v *Desai Manorbhai*, 22 Bom 849 See *contra*, *Keshav Ram Chandra* v. *Krishnarao*, 20 Bom 508 In *Alayakamma* v *Subbaraya*, 28 Mad 493: 15 M L J 219, it was held that "the payment of stamp duty, however, relates back to the date of presentation of the plaint, as a proper plaint, in the absence of any evidence to show that there was fraud in putting the plaint without a stamp "

A plaintiff who is unable to pay court-fees may continue it

in forma pauperis—A plaintiff who is unable to pay the additional court-fees demanded of him may be allowed to prosecute his suit in *forma pauperis*, even if the suit has been registered and issues framed on the court-fees as originally paid, if the plaintiff is not otherwise prevented by the provisions of rule 8, Or 33 of the Code of Civil Procedure, *Subbarao* v *Venkataratnam and others*, 53 Mad 43: 1929 A I R 828 (Mad.). 30 L W. 637: 57 M L J. 677. See also *Bava Sahib Miyan* v *Abdul Ghani Sahib and others*, 64 M L J 728. 37 L W. 725 1933 M W N. 468: 1933 A I R. 498 (Mad).

Defence formâ pauperis—Although there is no provision in the Code of Civil Procedure, a Court has power to allow a defendant to defend in *formâ pauperis*—as the power to allow such a request is not taken away by the Code and the Court can exercise such power, *Doorga Charan* v *Nittokally*, I L R. 5 Cal 819· 6 C L R 120

Review—When an application for review is presented in a suit in *formâ pauperis* that application is not liable to any court-fee, *Kunda Bibi* v *Naima Bibi*, 20 All 410 18 A W N 95 But in Punjab unless a petitioner has been declared a pauper in a previous stage of suit or appeal, he cannot file a review *formâ pauperis*, *Karom Khan* v *Buta Khan*, 91 P R 1895

Appeal formâ pauperis—See Or. XLIV, C P C. (Act V of 1908) Where the appeal was admitted and registered without objection by the opposite party and a deficiency in court-fees was subsequently discovered, the appellant was allowed to make good the deficiency and it was held that the appeal was in time, *Durga Charan* v *Dookhiram*, 26 Cal 925, *Seva Dutt* v *The Collector of Lahore*, 144 P W R. 1909, *Muhammad Farzand Ali* v *Rahat Ali and others*, 40 All 381 16 A L J 309· 45 I.C 29 When an application for leave to appeal in *formâ pauperis* is rejected the appeal goes with it, the Court may under s 149, C P. C allow or disallow time to put in the court-fees, *Vertennes* v. *Rawson*, 13 Ran 50

Cross-objection—See Or XLI, r 22 Proviso of the Code of Civil Procedure, 1908 An application for leave to file a petition of cross-objection in *formâ pauperis* can be entertained under the Code of Civil Procedure, *Gobinda Ram* v *Radha Ballabh*, 12 C L.J 173

Recovery of court-fees by Government in Pauper Suits.—The Government cannot attach and sell the decree itself in favour of the pauper plaintiff to realize the court-fees due to it. Sections 273 and 284 (Or. XXI, rr 53 and 64) do not contemplate such a sale, *Jatindra* v. *Dwarka*, 20 Cal 111.

An application for leave to file a suit *formâ pauperis* was filed before the amendment of the Court Fees Act and leave

was granted aftter the amended Act came into operation. The suit was decreed and on the question as to the amount of court-fees to be realized by Government, held that the plaint must be deemed to have been presented on the date the application for leave was presented, hence court-fees are payable on the old scale and not under the Amended Act, *Kaman Toda and others* v *Malli and another,* 49 M L J 538

Sec 35 of the Code of Civil Procedure is wide enough to enable a Court to order the payment to Government of court-fees in a suit in *formâ pauperis* as costs in the suit, although the Government may take the amount as revenue, *Elumalais Naicker and another* v *Kuppammal and others,* 58 M L J 623 1930 M W N. 289. 1931 A I R 249 (Mad): 53 Mad 716: 31 L W. 633: 128 I C. 156: 1931 I R 12 (Mad)

Precedence—See O XXXIII, r 10, C P C (Act V of 1908) and section 411, C P C (Act XIV of 1882), which have been construed to mean that "though it indicates the manner in which Crown may proceed to realize the debt (court-fees), it does not preclude the Crown or its representative from urging its prerogative and insisting on its right to precedence over all other creditors," *Gyanadabala* v *Butta Kristo,* 33 Cal 1040 10 C W N 857 (861), *The Collector of Krishna* v *Gajjala Sreeramamoorthy,* 80 I C 935

The right of precedence of the Crown was recognized in the following cases, *Gunpat Putaya* v *The Collector of Kanara,* 1 Bom 7, *Gulzari Lal* v *The Collector of Bareilly,* 1 All 596, *The Collector of Moradabad* v *Muhammad Daim,* 2 All 196, *Ramdas* v *The Secretary of State,* 18 All 419 16 A W N 121

Separate suit—Government need not bring a separate suit, but where the sale of a portion is subject to a mortagage, then the claim of the mortgagee is superior to the claim of the Government as the property of the mortgagor is liable to pay court-fees and not that of the mortgagee, *Dost Muhammad* v *Mani Ram,* 29 All 537: 27 All W N 157 4 A L J 720 See also Or 33, rule 13, C P C

Right of Government not barred by lapse of time—The right of Government to recover stamp fees in a successful pauper suit is not barred by any lapse of time, *Shami Mohammad* v *Munshi Mohammad,* 2 B L R App 22

Mode of Realization.—The Court is entitled to recover court-fees as a charge upon the property in possession of the successful plaintiff in a pauper suit, if its attempts to recover the same from the defendant personally fail. This may be done by an application in the proceeding under Or XXXIII, rr 10 and 13 and not by a separate suit, *Babu Girija Kuar* v *Secretary of State,* 4 Pat L J. 166. The Collector cannot sell

the decre in favour of the successful plaintiff, *Jatindra Nath* v. *Dwarka Nath*, 20 Cal. 111; *Sultan Koer* v. *Gulzari Lal*, 2 All. 290; *Tiruvengada* v. *Vythilinga*, 6 Mad. 418.

Pauper's claim admitted in part—Where the pauper plaintiff's claim was admitted in part by the defendant who offered to pay the part admitted to the plaintiff at any time he would ask for it, the High Court ordered that under the circumstances of the case, the subordinate judge should grant application of the plaintiff to sue as a pauper and at the same time issue an injunction on the plaintiff and the defendant not to take the admitted amount out of Court till such time as proper orders are passed with regard to court-fees after the termination of the suit, *Provash Chandra Lahiri* v *The Chairman of the Municipal Commissioners of Howarh*, 57 Cal 980 34 C W N 188 (191): 125 I C 102. 1930 A I R 147 (Cal) 1930 I R 486 (Cal)

Character of Claim by Government—It is a first charge (Order 33, rule 12) In a suit by wife claiming her dower debt against the mortgagee decree-holder of the properties of her husband, claiming priority over the mortgage, the wife obtained a money decree, and the Government claimed court-fees under section 411, C P C (Act XIV of 1882) as a first charge and sold the properties in auction, and the sale for realization took place first The Judicial Committee of the Privy Council said: "The decree of 11th of May 1879 did not create or purport to create any charge on the mortgaged property in favour of the Government The Government had no right to attach the property and sell it in execution under that decree, though of course, such interest, if any, as remained in the mortgagor from whom the court-fees were declared to be recoverable, might have been reached by a proper proceeding The order for the first sale was, therefore, without jurisdiction, and the sale passed [illegible]', *Ragho Prasad and others* [illegible] J 327 (331) · 16 C W N. [illegible] 9 I A 62· 1912 M W.N. 311: 22 M L J 457 13 Ind Cas 177 But where a portion of the subject matter of the pauper suit is sold to realize the dues of the Government in court-fees, and purchased by the plaintiff, the claim by a purchaser in execution of a decree in a subsequent suit cannot prevail against the plaintiff as under section 411, C P C, the stamp fees recoverable by the Government is a first charge upon the property, *Puthia Valappil* v. *Veloth Assenar*, 25 Mad. 733: 12 M.L J. 405. If there is nothing due to Government in court-fees an order for sale and a sale under that order is *ultra vires* and a nullity, *Balwant* v. *Muhammad Hussain*, 15 All 324.

Claim against purchaser of the decree in favour of the pauper.—A purchaser of the decree in favour of a pauper plaintiff

takes the decree subject to the charge in favour of Government under Order 33, rule 10 as to court-fees only and is not liable for the fees due to the Government Pleader, *Secretary of State* v. *Shiva Dutt*, 147 I.C. 751: 1934 A I.R 438 (All)

Appeal by Government—In case of an adverse order in realization of court-fees, the Government can appeal to a higher Court under section 47, C P C as if the Government was a party to the suit, see Order XXXIII, r. 11, C P C This rule sets at rest the difference of opinion of several High Courts as to the power of Government to file an appeal against an adverse order.

When the Government cannot claim the court-fees and costs—Where no enquiry was made as to the pauperism of a minor plaintiff who was not properly represented by a next friend, no costs would be given against the estate of the minor and if passed, the order is *ultra vires* and *illegal*, *Amirchand* v *Collector of Sholapur*, 13 Bom 234

Compromise of suit—The word "fails" in section 412, C P C (Or XXXIII, r 11) applies only to the cases of adjudicated failure; therefore the party who compromises suit without trial is not liable to pay court-fees, *The Collector of Kanara* v *Krishnappa*, 15 Bom 77 See also *Bai Chandaba and another* v. *Kuver Saheb*, 18 Bom 464 But these authorities were modified by a Full Bench of the Bombay High Court in the case of *Secretary of State* v *Bhagirathi Bai*, 31 Bom 10: 8 Bom L R 689, where the plaintiff was ordered to pay court-fees when he withdrew his suit without leave as the result of compromise, see also *Balwant Singh* v *Rochan Singh*, 18 All 253 (255), *Reference under Court Fees Act*, 4 M L J 98 A suit in *forma pauperis* for possession of a moiety of a house by a widow against her co-widow was compromised by a decree for maintenance of Rs 8 a month which was made a charge upon the house The Government then applied for realisation of court-fees by appointing a receiver to collect the maintenance The High Court held that as the amount of maintenance is not attachable a receiver could not be appointed and refused the prayer, *Secy of State for India* v *Bai Sonni*, 57 Bom 507 35 Bom L R 615 146 I C. 340· 1933 A I R (Bom) 350, see also *Secy of State* v *Sarvepalli Venkata Lakshmanna*, 49 Mad 567

Withdrawal of suit—See Or XXXIII, r 11, C P C (Act V of 1908) Where a pauper plaintiff withdraws a suit with liberty to bring a fresh suit, he is liable to pay court-fees to Government, *Secretary of State* v *Narayan*, 20 Bom 102. See also *Secretary of State* v *Bhagirathi Bai*, 31 Bom. 10: 8 Bom L R 689 The word 'withdrawn' has been added by Act V of 1908

Dismissal of Suit by Pauper without trial—A plaintiff who

has filed a suit *formâ pauperis* is liable to pay court-fees even if the suit be dismissed without trial, *The Collector of Vizagapatam* v. *Abdul Karim and others*, 12 Mad. 113: 8 M.L.J. 4; *The Collector of Trichinopoly* v. *Sivaramakrishna*, 23 Mad 73: 9 M.L.J. 265. See *contra—The Collector of Canara* v. *Krishnappa*, 15 Bom. 77.

Return of Pauper Plaint—Where the plaint was returned to be presented to proper Court and the Court ordering the return ordered the plaintiff to pay court-fees, the High Court in revision set aside that order, *Collector of Ratnagiri* v. *Janardan*, 6 Bom 590

Portion of plaintiff's claim allowed—Where in a suit brought in *formâ pauperis*, the suit was partly decreed and partly dismissed and the trial Court ordered in awarding costs against defendant, that the defendant should pay the entire amount of court-fees payable on the plaint, *held* that court-fees payable on the plaint should have been apportioned between the plaintiff and the defendant in accordance with their respective success, *Chandrareka* v *Secretary of State*, 14 Mad 163 followed in *Ganga* v *Musst Goura*, 38 All 469 14 A L J 657· 35 Ind. Cas 46 Where a portion of the claim is allowed the Government is only entitled to so much amount in court-fees as is payable on the amount decreed, *Chandrareka* v. *Secretary of State*, 14 Mad 163 See *Janki* v *Collector of Allahabad*, 9 All 64: 6 All W N 300

Where the claim of the plaintiff who was allowed to sue in *formâ pauperis* succeeded as to part, then the defendant is liable only for the court-fees proportionate to that and the rest being payable by the plaintiff, *Rami Reddi* v *Chenchu Palamma*, (1930) 53 Mad 780· 36 L W 172 129 I C. 66: 1930 A I R 1000 (Mad) 1931 I R. 210 (Mad)

Where the plaintiff claimed maintenance and the defendant totally denied the right to claim maintenance but the Court decreed the suit partially and ordered the defendant to pay the court-fees entirely, held that the discretion of the Court as regards the order as to court-fees has been rightly exercised in view of the fact that the defendant had denied the right entirely, *Rohini Kumar Pal* v. *Kusum Kamini Pal*, 32 C W N 48: 105 I.C 725

Power of Collector—The Collector of a district may, on sufficient grounds, remit the court-fees recoverable by Government from any party, after judgment, *B G R No 3945, dated 14th September, 1877.*

Payment of court-fees after limitation in Pauper Suits.—The plaintiff filed an appeal in *formâ pauperis* in time, valuing his appeal at Rs. 2,500 instead of Rs. 230 on which he paid court-fees in the trial Court and the District Judge directed the

Sub-Judge to enquire into pauperism and held that the value is the correct value and the plaintiff paid the court-fees within time allowed. The High Court held that the appeal is not time-barred, *Bai Ful* v. *Desai Manorbhai*, 22 Bom. 849 (856)

An application for leave to sue *formá pauperis* accompanying an unstamped memorandum of appeal, filed in time, was rejected by the District Court within the X'mas vacation. On the re-opening day of the District Court, the appellants applied for and obtained leave of Court to pay the requisite court-fees within three weeks, and paid the court-fees within that time, *held* that the appeal was in time and must be deemed to have been filed on the original date of filing, and that the rejection of application to present the appeal *forma pauperis* does not lead to a dismissal of appeal and that the appellate Court has power under sections 148 and 149, C P C to grant extension of time (22 Bom 880 followed), *Nalladiva* v *Subramania Pillai*, 40 Mad 687· 31 M L J 269 See also *Patcha Shaheb* v *The Collector of North Arcot*, 15 Mad 78; *Maria Thangathammal* v *Iravathiswara Iyer*, 1915 M W N 228; *Raja Ram* v *Tilock Chand*, 30 P L R 1903; *Swan Tee* v *Ma Ngwe*, 9 Bur L T 69. 32 Ind Cas 630, *Janakdhary* v *Janki Koer*, 28 Cal 427; *Durga Charan* v *Dookhiram*, 26 Cal 925, *Skinner* v *Orde*, P C 2 All 241 L R 6 I A 126 4 C L R 331

There can be no objection to a petition to sue in *formá pauperis*, which has not been granted, being registered as a plaint in the suit on full fees being paid The suit ought not to be dismissed for non-payment of costs incurred by Government in opposing the petition, when no demand for its payment was made at any time either on behalf of Government or by Court, although payment of such costs is a condition precedent under section 413 of the Code of Civil Procedure, (Act XIV of 1882), *Mrinalini Devi* v *Tinkouri*, 16 C W N 641: 14 Ind Cas 297 See *contra*—*Aubhaya Charan* v *Bisseswari*, 24 Cal 889, where it was held that when an application for permission to sue *formá pauperis* is rejected and a full court-fee is paid for the same relief, the suit for the purpose of limitation, must be deemed to have been instituted when the full court-fee was paid and not at the date of presentation of petition for permission to sue in *formá pauperis* See also *Hari Singh* v *Gur Baksh*, 130 P L R 1909. 94 P R 1909 95 P L R 1909

Effect of reducing claim.—A pauper appellant may abandon a portion of his claim, after rejection of his application to sue in *forma pauperis* and pay court-fees on the diminished valuation No question of *mala fides* arises in such a case, *Rajendra Prasad Bose* v *Gopal Prasad Sen*, 9 Pat L T. 613.

under clause (c)—inserted in Bombay and C. P.]

[*subject to the provisions of section 8C—added in Bengal*]

[*Provided that in suits coming under sub-clause (c), in cases where the relief sought is with reference to any immoveable property, such valuation shall not be less than half the value of the immoveable property calculated in the manner provided for by paragraph (v) of this section—added in Madras*].

In all such suits the plaintiff shall state the amount at which he values the relief sought

[Added in Madras—

(IVA) In a suit for cancellation of a decree for money or other property having a money-value, or other document securing money or other property having such value,

according to the value of the subject-matter of the suit, and such value shall be deemed to be—

if the whole decree or other document is sought to be cancelled, the amount or the value of the property for which the decree was passed or the other document executed,

if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property.]

for possession of lands, houses and gardens;

(v) In suits for the possession of land, houses, and gardens—according to the value of the subject-matter; and such value shall be deemed to be—

where the subject-matter is land, and—

(a) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government,

or [*where the land—in C. P.*] forms part of such an estate, and is recorded in the Collector's register as separately assessed with such revenue

and such revenue is permanently settled—

ten times the revenue so payable;

[*Twenty times in Bihar and Orissa, Assam, Madras and U P.*]

(b) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or [*where the land—in C. P.*] forms part of such estate, and is recorded as aforesaid;

and such revenue is settled, but not permanently—five times the revenue so payable:

[*Ten times in Bihar and Orissa, Madras, Punjab, and six times—in U. P. and seven and a half—in C P*]

(c) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue,

and nett profits have arisen from the land during the year next before the date of presenting the plaint—

fifteen times such nett profits;

but where no such nett profits have arisen therefrom—the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood;

(d) where the land forms part of an estate paying revenue to Government, but is not

definite share of such estate, and is not separately assessed as above mentioned— the market-value of the land:

Proviso as to Bombay Presidency.

Provided that, in the territories subject to the Governor of Bombay in Council, the value of the land shall be deemed to be—

(1) where the land is held on a settlement for a period not exceeding thirty years, and pays the full assessment to Government,— a sum equal to five [*seven and a half— in Bombay*] times the survey-assessment;

(2) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government— a sum equal to ten [*fifteen—in Bombay*] times the survey-assessment; and

(3) where the whole or any part of the annual survey assessment is remitted—a sum computed under paragraph (1) or paragraph (2) of this proviso, as the case may be, in addition to ten [*fifteen--in Bombay*] times the assessment or the portion of assessment, so remitted:

Explanation —The word "estate," as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor, or farmer or raiyat, shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue;

[For Madras only—

Provided that if rules are framed under s. 3 of the Suits Valuation Act, 1887, for determining the value of land for the purposes

of jurisdiction, the value so determined shall be deemed to be the value of the land for the purposes of this paragraph.]

[For Bengal only—

(v) *In suits for the possession of land, buildings or gardens—*

(a) *according to the value of the subject-matter, and such value shall be deemed to be fifteen times the nett profits which have arisen from the land, building or garden during the year next before the date of presenting the plaint, or if the Court sees reason to think that such profits have been wrongly estimated, fifteen times such amount as the Court may assess as such profits or according to the market-value of the land, building or garden, whichever is lower;*

(b) *if, in the opinion of the Court, such profits are not readily ascertainable or assessable, or where there are no such profits, according to the market-value of the land, building or garden.*

Explanation.—*In this paragraph "building" includes a house, out-house, stable, privy, urinal, shed, hut, wall and any other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever.*]

(e) where the subject-matter is a house or garden—

for houses and gardens ;

according to the market-value of the house or garden;

(vi) In suits to enforce a right of pre-emption—

to enforce a right of pre-emption ;

according to the value (computed in accordance with paragraph V of this section) of the land, house or garden in respect of which the right is claimed;

definite share of such estate, and is not separately assessed as above mentioned—the market-value of the land:

Proviso as to Bombay Presidency.

Provided that, in the territories subject to the Governor of Bombay in Council, the value of the land shall be deemed to be—

(1) where the land is held on a settlement for a period not exceeding thirty years, and pays the full assessment to Government,—a sum equal to five [*seven and a half—in Bombay*] times the survey-assessment;

(2) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government— a sum equal to ten [*fifteen—in Bombay*] times the survey-assessment; and

(3) where the whole or any part of the annual survey assessment is remitted—a sum computed under paragraph (1) or paragraph (2) of this proviso, as the case may be, in addition to ten [*fifteen—in Bombay*] times the assessment or the portion of assessment, so remitted:

Explanation.—The word "estate," as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor, or farmer or raiyat, shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue;

[For Madras only—

Provided that if rules are framed under s. 3 of the Suits Valuation Act, 1887, for determining the value of land for the purposes

of jurisdiction, the value so determined shall be deemed to be the value of the land for the purposes of this paragraph.]

[For Bengal only—

(v) *In suits for the possession of land, buildings or gardens—*

(a) *according to the value of the subject-matter, and such value shall be deemed to be fifteen times the nett profits which have arisen from the land, building or garden during the year next before the date of presenting the plaint, or if the Court sees reason to think that such profits have been wrongly estimated, fifteen times such amount as the Court may assess as such profits or according to the market-value of the land, building or garden, whichever is lower;*

(b) *if, in the opinion of the Court, such profits are not readily ascertainable or assessable, or where there are no such profits, according to the market-value of the land, building or garden.*

Explanation.—*In this paragraph "building" includes a house, out-house, stable, privy, urinal, shed, hut, wall and any other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever.*]

(c) where the subject-matter is a house or garden—

for houses and gardens; according to the market-value of the house or garden;

(vi) In suits to enforce a right of pre-emption—

to enforce a right of pre-emption; according to the value (computed in accordance with paragraph V of this section) of the land, house or garden in respect of which the right is claimed;

[For Bengal only—

(vi) *In suits to enforce a right of pre-emption—according to the market-value of the land, building or garden in respect of which the right is claimed.*

Explanation.—*In this paragraph 'building' has the same meaning as in paragraph v.*

(viA) *In suits for partition and separate possession of a share of joint family property or of joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property—*

if the plaintiff has been excluded from possession of the property of which he claims to be a co-parcener or co-owner—according to the market-value of the share in respect of which the suit is instituted.]

(vii) In suits for the interest of an assignee of land-revenue—fifteen times his nett profits as such for the year next before the date of presenting the plaint,

for interest of assignee of land revenue,

(viii) In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached:

to set aside an attachment,

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest;

(ix) In suits against a mortgagee for the recovery of the property mortgaged,

to redeem;

and in suits by a mortgagee to foreclose the mortgage,

to foreclose.

or, where the mortgage is made by conditional sale, to have the sale declared absolute—

according to the principal money expressed to be secured by the instrument of mortgage;

[For U. P. and C. P.—

(ix) *In suits against a mortgagee for the recovery of the property mortgaged—according to the principal money expressed to be secured by the instrument of mortgage.*

(ixA) *In suits by a mortgagee to foreclose the mortgage, or, where the mortgage is made by conditional sale, to have the sale declared absolute—(according to the total amount claimed by way of principal and interest—in U P) and (according to the amount claimed as due at the date of presenting the plaint—in C P.)*]

for specific performance.

(x) In suits for specific performance—

(*a*) of a contract of sale—according to the amount of the consideration;

(*b*) of a contract of mortgage—according to the amount agreed to be secured,

(*c*) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term;

(*d*) of an award—according to the amount or value of the property in dispute;

between landlord and tenant

(xi) In the following suits between landlord and tenant:—

(*a*) for the delivery by a tenant of the counterpart of a lease,

(*b*) to enhance the rent of a tenant having a right of occupancy,

(*c*) for the delivery by a landlord of a lease,

(*cc*) for the recovery of immoveable property from a tenant, including a tenant holding over after the determination of a tenancy.

(*d*) to contest a notice of ejectment,

grades of Courts is the actual value of the property in litigation, *Aukhil Chunder* v. *Mohiny Mohan*, 5 Cal 489. 4 C.L.R. 491. See also *Kirty Churn* v. *Aunath Nath*, 8 Cal 757. 11 C L R. 95.

In those class of cases where, for example, the class of suits indicated in section 7, paragraph xi of the Court Fees Act, the Court Fes Act itself enacts the method of calculation of court-fees, then according to section 8 of the Suits Valuation Act, the artificial value is to govern the valuation for jurisdiction This is only where there is conflict with the provisions of the Court Fees Act and the provisions of the Suits Valuation Act. In *Sailendra* v *Ram Charan*, 25 C W.N. 768 34 C L J 94, the High Court said "The procedure to be adopted in cases of this character is obvious, first, value the suit for payment of court-fees in accordance with the rule embodied in section 7, sub-section (x), clause (c) of the Court Fees Act; then adopt the valuation so determined for the purpose of court-fees, as the value for purposes of jurisdiction" See also *Hari Sanker and others* v *Kali Kumar*, 32 Cal. 734· 9 C W N 690, *Bai Varunda Lakshmi* v *Bai Manigavri*, 18 Bom 207; *Velu Goundan* v *Kumara Velu*, 20 Mad 289 According to the above criterion, when it happens that the suit is not instituted in the Court of lowest grade competent to try it, section 11 of the Suits Valuation Ac saves the litigant, *Sailendra* v *Ram Charan*, 25 C W N 768 34 C L J 94 (96); *Nidhi Lal* v *Magha*, 7 All 230; *Matra Mandal* v *Hari*, 17 Cal 155 But in *Nanak* v *Guranditta*, 63 P R 1902, it was held that section 8 of the Suits Valuation Act so far governs section 7 of the Court Fees Act as to indicate that it was not the intention of the Legislature that a plaintiff would be able to put an arbitrary value on the suit, and therefore in a suit for injunction without damages, the court-fees payable is on the valuation for jurisdiction within the limits of the rules under section 9 of the Suits Valuation Act

The Court Fees Act is not to be resorted to for the purpose of the valuation of the subject-matter of suits, *Dayachand* v *Hemchand*, 4 Bom 515, *Rupchand* v *Valvant Narayan*, 11 Bom 511; *Amrita* v. *Naru*, 13 Bom 489; *Bai Meher* v. *Magan Chand*, 29 Bom 96. But this can only happen where the provisions of section 8 of the Suits Valuation Act do not require the valuation for the purpose of jurisdiction and valuation for the purpose of court-fees, to be identical The plaint alone is to be considered and not subsequent circumstances in the valuation of a suit, *Rajabala Dassi* v. *Radhicacharan*, 40 C.L J. 150: 1924 A.I R. 969 (Cal): 79 I C. 982

It is to be noted that a party cannot by payment of excess court-fees confer jurisdiction on another Court, *Gopala Menon* v. *K. V. Raman Menon*, 1932 M W.N. 53

Where there is no basis for valuation.—Where there is no basis for a valuation the plaintiff may make an imaginary valuation but he must pay court-fees on such valuation as the Court may subsequently make The valuation by the plaintiff must be reasonable, *Dipchand Dowlatram* v *Firm of Permanand Chimandas*, 79 I C 582 (Sind) · 1924 A I R. 144 (Sind)

Different Valuations.—If different valuations are made one for the purpose of jurisdiction and the other for the purpose of court-fees, the plaintiff should at once be called upon either to amend the valuation so as to bring the case within the special jurisdiction or take back the plaint to be presented to proper Court, but if the defendant did not raise any objection at trial and the Court proceeded to judgment then no objection can be raised at a later stage, *Balkrishna Narayan* v *Jankibai*, 44 Bom. 331 22 Bom L R 289 57 I C 340

The plaintiff is not entitled to put a higher valuation for the purpose of jurisdiction and a lower valuation for the purpose of court-fees (where these should be the same), *Jogeshra* v *Durga Prasad*, 36 All 500 12 A L J 844. 24 I C 679; *Mannu Lal* v *Radhey Gopalji*, 47 All 501: 23 A L J 344: 1925 A I R 602 ((All): 87 I C 190

The plaintiff is not entitled to put a higher valuation on the plaint for the purpose of jurisdiction and thereby obtain an adjudication from a superior Court, and cannot make a lower valuation for the purpose of court-fees in cases where such values should be equal, *Kandhaiya Ojha* v *Musst Jagrani Kuar*, 46 All 419 22 A L J 349: 79 I C 358, *Sriram* v. *Dataram*, 16 S L R 109 70 I C 852 1922 A I R 20 (Sind); *M Ayimuddin* v *S E S Kadira Rowthan*, 1918 M W N. 40: 43 I C 995.

Under sec 8 of the Suits Valuation Act, the plaintiff is debarred from putting one valuation for the purpose of jurisdiction and another for the purpose of court-fees, *Rajkristo Dey* v. *Bepin Behary*, 16 C.L J 194 · 40 Cal. 245. See also the judgment of Rankin C J in *Kali Pada Mookherjee* v. *Basanta Kumar Dutt and others*, 58 Cal 281: 34 C W N 870: 1930 A I R 686 (Cal)

Note.—When a suit is separately valued, the court-fees are generally paid in this way, *viz*, *ad valorem* court-fees on a lower valuation for the purpose of court-fees plus a court-fee as on a suit for declaration, but the party omits to consider that a court-fee as on a declaration can be paid only when the suit is one for a declaration without consequential relief under Art. 17, Sch. II of the Court Fees Act, and if there be a consequential relief, then the suit is one for declaration with consequential relief.

Conflict of section 7 of the Court Fees Act with section 8 of the Suits Valuation Act—In case of conflict of section 7 of the Court Fees Act with section 8 of the Suits Valuation Act, "the right construction of section 8 of the Suits Valuation Act is that the valuation for the purpose of jurisdiction should, in the cases mentioned there, follow and be the same as the valuation for court-fees," *Sailendra* v. *Ram Charan*, 34 C L.J. 94; 25 C.W.N. 768 See other cases under sec 7 (iv) (c), *infra.*

Valuation rests with plaintiff.—The valuation rests with the plaintiff and not with the Court, *Golab Dai* v *Jiwaneer*, 2 All 320, *Ostoche* v *Haridas*, 2 A 869, *Jogal Kishore* v. *Tale Singh*, 4 All. 320; *Sheodeni Ram* v *Tulsi Ram*, 15 All 378; *Manohar Ganesh* v. *Bawa Ram*, 2 Bom 219, *Sardar Singi* v. *Ganpat*, 17 Bom 56, *Bai Verunda* v *Bai Manigavri*, 18 Bom. 207; *Vachhani Keshabhai* v *Vachhani Nanubhai*, 33 Bom 307: 1 I.C 108· 11 Bom L R 30, *Hari Sankar* v *Kali Kumar*, 32 Cal 734: 9 C W N 690, followed in *Jogendra* v *Toriatunnessa and others*, 35 C L J 144 62 Ind Cas 685· (1922) A I R 242 (Calcutta), *Jan Mahomad* v *Masher*, 34 Cal 352. 11 C W N. 458: 5 C L J 400, *Ram Ekbal* v *Baledeo*, 19 C L J. 418, *Prahlad* v. *Dwarka*, 14 C W N 929, *Velu Gounden* v *Kumar Velu*, 20 Mad 289; *Samiya* v *Minamal*, 23 Mad 490, *Guru Viamma* v. *Venkata*, 25 Mad 34, *Chinnammal* v *Madarsa Rowther*, 27 Mad 180, *Sunderbai* v *The Collector of Belgaum*, 43 Bom. 376 (P C) 23 C W N 753, *Krishnarao* v *Musst Chandrabhagabai*, 79 I C 668 (Nagpore), *Tayabally Abdul Hussain* v *Messrs James Finlay &Co*, 80 I C 969 (Sind); *The Official Trustee of Bengal* v *Gobardhan Guchait and other*, 33 C.W N. 231: 118 I C 357, *Pannalal Lala* v *Abdul Gani and others*, 34 C.W N 321· 127 I C 665 1930 A I R 473 (Cal); *In re Kalipada Mookherjee*, 58 Cal 281 34 C W.N 870· 1930 A I.R 686 (Cal), *Musst Chhaterpali and others* v *Mt Kalap Dei*, 54 All 232 1931 A L J 837 135 I C 237: 1932 A I R 114 (All); *Ghulam Haidar* v *Bishambhar Das*, 33 P.L R 458; *Jhanda Singh* v *Gulab Mal—Bhagwan Das*, 33 P.L R 488: 137 I.C. 240: 1933 A I.R. 246 (Lah): 1932 I R. 320 (Lah.)

The valuation should not be arbitrary.—The valuation should not be arbitrary but should be a reasonable valuation, *Motibhai* v *Haridas*, 22 Bom. 315; *Baidyanath* v. *Makhan*, 17 Cal. 680; *Krishna Das* v. *Hari Charan*, 14 C L.J 47: 15 C W.N 823: 10 Ind Cas 865; *Bepin* v. *Raj Krishna*, 40 Cal 245· 16 C L.J. 94: 17 C W.N. 591: 17 I.C. 162; 40 Cal 245: 16 C L J. 94: 17 C W.N. 591: 17 I C 162; *Mohendra* v. *Dinabandhu*, 19 C L J. 15: 21 Ind Cas. 771; *Rajabala* v. *Radhika Charan*, 40 C.L J. 150: 1924 A.I.R 969 (C.); *Jageshra* v. *Durga Prosad*, 36 All. 500: 12 A.L J. 844: 24 Ind Cas. 679; *Shama Prosad*

v. *Sheoparsan,* 2 Pat L W 173: 41 Ind Cas 95, *Harichand* v. *Jiwan Mal,* 255 P L R 1903: 28 P R 1903

The valuation of a suit for a declaration with a consequential relief must not be arbitrary and in case of a dispute as to valuation the Court is to determine the value, *Kalicharan* v. *Shivshankar,* 79 I C 113 1924 A I R 295 (Nag) See also *Bara Mal.* v *Tulsi Ram,* 9 Lah 366. 9 L L J 579. 29 Punj. L.R 27: 107 I C 609· 1927 A I R 890 (Lah)

The plaintiff cannot put an arbitrary value upon the relief he claims but is bound to assess at the market value of the interest he claims, *Kattiya Pillai and others* v. *Rameswami Pillai (insane), by his wife etc,* 56 M.L J. 394: 1929 M.W.N. 286 29 L W. 584: 1929 A I.R. 396 (M)

A valuation cannot be accepted if it appears on the face of it not to be a reasonable valuation, *Jogendra Nath Singh* v. *Radha Prasad,* 13 P.L T. 590: 140 I.C. 817: 1932 A.I.R. 319 (Patna), *Ramcharitar Pandey* v *Basgit Roy,* 11 Patna 161: 1932 A.I.R. 9 (Patna); 12 P L.T. 656: 1931 I R. 399 (Patna): 133 I.C. 687; *Nadir Khan Abdullah Khan* v. *Firm of the Cox's and King's Shipping Agengy Ltd,* 25 S L R. 15: 130 I.C. 445. 1931 A I R. 15 (Sind); *Maung Nae and another* v. *Maung Kha Pu,* 142 I.C. 705: 1933 A.I.R. 40 (Ran.)

But in suits for acounts and *mesne* profits an approximate value is to be given, see Or. 7, r. 2, C. P. C., and see also *Manohar* v. *Bawa,* 2 Bom. 219; *Gulab* v. *Abdul,* 21 Cal. 365.

Power of Court to revise the valuation.—The Court can revise the valuation if it is capricious and arbitrary' See *Umatul* v. *Musst. Nauji,* 11 C.W.N. 705: 6 C.L J. 427 where the Calcutta High Court held that "it is not only within the power of the Court but it is also its duty to take action under section 54 of the Code of Civil Procedure (Act XIV of 1882) if it establishes that the valuation is improper." See *Balwant Rai* v. *Bhima Sankar,* 13 Bom 517.

The provisions of the Court Fees Act are controlled by the provisions of Or. 7, Rule 1 (2) and Rule 11, Cl. (b), C P. C. and when the Court finds that the relief has been valued arbitrarily or improperly, the Court can compel the plaintiff to revise the valuation and pay the court-fees thereon, *Shivandas Matumal* v. *Hariram and another,* 1933 A.I.R. 322 (Sind): 27 S L R. 335: 147 I.C. 251. A Court may in a suit for declaration with consequential relief revise the valuation if it be arbitrary, but such revision by Court should be based on evidence, *Ramchariter Pandey* v. *Basgit Roy,* 11 Patna 161: 12 P.L.T. 656: 133 I C. 687: 1932 A I.R. 9 (Patna): 1931 I.R 399 (Patna).

But according to Madras High Court such power is limited to cases mentioned in section 9. The Madras High Court said

that "the trial Court cannot refuse to accept the valuation made by the plaintiff under the sanction of verification the amount at which he values the relief sought," nor can it revise it "a power which is limited to cases provided for by section 9 which relates to an estimate given by the plaintiff of the annual nett profits of the land or the market value of the land, house or garden as mentioned in section 7, paragraphs v and vi.. ... . Section 9 provides *inter alia* that it is competent to the High Court with the previous sanction of the Local Government to frame rules for the valuation of suits referred to in paragraph iv of section 7 of the Act and for determining the jurisdiction of the Court and until such a rule is framed the valuation given by the plaintiff cannot be revised, *Channammal* v *Madarsa*, 27 Mad. 480: 14 M L J. 343 See also *Samiya* v *Minammal*, 23 Mad 490: 10 M L J. 240; *Guruvaiayamma* v *Venkata Krishnamma*, 25 Mad 34

But see *Krishna Mallar* v *The Secretary of State for India*, 1914 M W N 767 where the Madras High Court held that a party cannot make different valuations

Sec. 151, C. P. C.

Where a plaintiff puts an absurd overvaluation in order to have the suit tried by a particular Court that Court can interfere with the valuation so made under s 151 of the Code of Civil Procedure, *Rajendra Bakhsh Singh* v *Musst. Bahu Rani*, 107 I C 330 1928 A I R 260 (Oudh)

In *Narayanganj Co-operative Society Ltd*, v *Maffizuddin Ahmad*, 61 Cal 798 38 C W.N 589: 59 C L J. 233. 149 I.C 3: 1934 A I R 448 (Cal) F B, the Calcutta High Court held that though Or 7, r 11 which in its clause (b) gives the Courts power in a case of undervaluation of a relief to require the plaintiff to correct the valuation given by him in his plaint and to reject the plaint in case the plaintiff fails to do so, appears in a procedural code, while nothing as to such correction is stated in the taxing statute itself, namely, the Court Fees Act, yet the two enactments have to be read together and simultaneously given effect to when there is nothing in either enactment expressly indicating any contrary intention Sub-section (iv) of section 7 of the Court Fees Act should be read as controlled by Or 7, r. 11 (b) of the C. P Code, but until standards are laid down by appropriate rules framed under s 9 of the Suits Valuation Act, it would not be possible for the Courts to exercise this power except in those classes of cases falling under the clause in which the valuation made by the plaintiff is illegal, palpably absurd, manifestly illogical or arithmetically wrong.

Note.—The Court has power to revise the valuation by the plaintiff in spite of the provisions of the Court Fees Act,

under Rules 10 and 11 of Order 7 of the Code of Civil Procedure, 1908 Sec 7 is within Chapter III of the Court Fees Act, so also is sec 12 of the Court Fees Act and under sec 12 of the Court Fees Act the Court has power to investigate and revise the valuation An appeal Court may revise the valuation made by the trial Court when the question has been wrongly decided to the detriment of revenue In this connection it is desirable to compare the provisions of sec 7, paragraph iv of the Court Fees Act which enacts that court-fees are to be paid "according to the amount at which the relief sought is valid in the plaint or memorandum of appeal." See also sec 8 of the Suits Valuation Act, where the words are *"the value as determinable for the computation of court-fees* and the value for purposes of jurisdiction shall be the same" The words "as determinable" obviously mean as determinable by Court, the final authority in all disputes between the parties (31 Bom 73) The Court Fees (Bengal Amendment) Act VII of 1935 has given the Court express powers to revise the valuation.

Allegations by the plaintiff are to be considered and not the statements by the deft. in the W S.—The valuation, generally, is the valuation by the plaintiff; the plaint only is to be taken into consideration and not the statements by the defendant in the written statement. "The Court has got to look at and see in each particular case what is the nature of the relief claimed and, for that purpose, it must look at the allegations that are contained in the plaint," *Bagala Sundari* v *Prasanna,* 21 C W N. 375: 35 Ind. Cas 797; *Manghammal* v. *Tolaram,* 6 S L R 72: 16 Ind Cas 773. For the purposes of stamp duty the cause of action which is stated in the plaint, and that only, must be looked at, *Mahendra Chandra Ganguli* v. *Ashutosh Ganguli,* 20 Cal. 762; *Rajabala* v *Radhika,* 40 C L J. 150: 1924 A I.R 969 (Cal.); *Zinnatunnessa* v. *Girindra,* 30 Cal 788; *Tulsi Bibi* v. *Furokh Bibi and others,* 60 C.L.J. 377.

See also *Karuppa Tevar* v. *Angammal and others,* 51 M.L J. 67: 96 I C. 129: 1926 A.I.R 678 (Mad.), where it was held that for the purpose of ascertaining the court-fee payable, the Court must have regard to the allegations in the plaint. It is not material whether these have been denied or not in the written statement. See also *Chingacham Vitil Sankaran* v *Chingacham Vitil Gopal,* 30 Mad. 18; *Venkata Ramani* v. *Narayansami,* 1925 M W.N 276 The amount of court-fees leviable is to be determined on the construction of the plaint alone, *Ishwari Prasad and others* v. *Rai Hari Prasad Lal,* 6 Pat. 506: 8 P.L.T. 34: 106 I C. 620: 1927 A I R 145 (Patna); *Musst Barkatunnissa* v. *Musst Kaniz Fatima,* 5 Pat 631: 98 I C. 817: 1927 A I.R. 140 (Patna); *Tekait T. Narayan Singh* v. *Saiyid Dildar Ali Kha.* 3 Pat. 403: 6 Pat L T. 191: 80 I.C. 544: 1925 A.I.R. 210 (Pat

Barku v. *Chatur*, 1924 A.I.R. 640 (Pat.); *Hasan Khan* v. *Ahmad Khan*, 1935 A.I R. 30 (Pesh)

The plaintiff brought a suit for recovery of possession of land with *mesne* profits detailed and specified in the plaint against certain defendants alleging that " as all the defendants have in league and collusion with one another, caused wrong entries to be made in the survey records and have dispossessed the plaintiff, they are all made parties to this suit " Held, on reference, "the claim is one only The defendants might set up different claims, but the nature of the suit is not to be determined upon the pleas taken by the defendants but upon the frame and scope and the intentions and object of the plaintiff *The plaint and plaint alone will determine* it and the court-fee has to be paid upon the determination and scope of it." *Mahanth Ram Narayan Gir* v. *Gauri Shankar Lal and others*, 9 P L T 199. 7 Patna 402: 110 I C. 191: 1928 A.I R 274 (Pat). See also *Jai Pratap Narain* v. *Rabi Pratap Narain*, (1930) 52 All 756: 1930 A L J 984: 124 I C. 708: 1930 A I R 443 (All). 1930 I R. 564 (All).

The question of court-fees must be decided on the allegations made in the plaint and the relief actually asked for, *Radha Krishna* v *Ram Narain*, 53 All 552 131 I.C 604 1931 A.I.R. 369 (All); *Asa Ram* v *Jagannath*, 15 Lah 531: 36 P.L R. 48: 150 I.C 994: 1934 A I R 563 (Lah.) F B

Substance of the claim to be considered.—In order to determine the amount of court-fees payable the Court must look to the substance of the claim, and not merely the form in which the relief has been prayed for, *Kattiya Pillai* v *Ramaswami Pillai (insane) by his wife etc*, 56 M L J. 394 1929 M W N 286 29 L W 584 1929 A I.R. 396 (Mad) · 119 I.C. 35 The substance and not the language of the plaint is to be looked to and that a suit for a declaration that an instrument of mortgage or sale executed by the plaintiff or a decree that has been passed against the plaintiff is not binding on him, is a suit for a declaration with a consequential relief, *Arunachellam Chetty* v. *Rangaswamy Pillai*, 38 Mad 922. 28 M.L J. 118: 1915 M.W.N 118. 17 M L.T. 154: 28 I C. 79 F.B

"The question whether section 7, paragraph iv, clause (c) applies or not must depend on the substance of the claim and not on the mere words which a plaintiff may choose to introduce into his plaint with reference to it," *Chingacham Vitil Sankaran Nair* v. *Chingacham Vitil Gopala Menon*, 30 Mad 18 (20); *Nagbhusanam* v. *Venkatappayya*, 68 M.L J. 95: 41 L.W. 90: 1935 A.I.R. 203 (Mad).

The substance and not merely the language of the plaint is to be examined by the Court when the question is whether a purely declaration is sought for or a declaration with a con-

sequential relief has been prayed for, *Bindaran* v. *The Punjab National Bank, Ltd*, 30 P L.R 176: 1929 A.I R 463 (Lah); *Hakim Rai* v *The Firm Ishardas-Garakh Rao*, 8 Lah. 531 · 102 I C. 46: 1927 A.I R 499 (Lah).

The substance and not the exact reliefs prayed for is to be considered in determining the amount of court-fees payable on a plaint, *Kamala Prasad* v. *Jagarnath Prasad*, 10 Patna 432. 130 I C. 46: 1931 A I.R 78 (Patna) 1931 I R 142 (Patna). Substance of the claim and not the mere form and words used in the plaint is to be looked at, *Gajendranath* v *Sulochana*, 39 C.W N 131: 60 C L J 201: 1935 A I R 338 (Cal).

If the plaint is deliberately cast into a declaratory form as to evade payment of court-fees, but is nevertheless a plaint for a declaration of title with a consequential relief, the court-fees payable would be *ad valorem* on the value of the property in dispute. It is the bounden duty of Courts to look into the substance of the relief claimed, *Mathura Prasad* v *Ram Lal*, 11 O.W N 1292· 152 I C 709 1934 A I R 505 (Oudh)

Evasion of Stamp Law.—In the following cases High Courts remarked upon the attempt to evade stamp laws, *Chokalinga* v *Achiyar*, 1 Mad 40, *Ganpat Gir, Bholagir* v *Ganpatgir*, 3 Bom 230, *Bama Sundari* v *Soorjo Kumar*, 22 W R 338, and the parties in these cases were compelled to pay deficit court-fees

But in *Deokali Koer* v *Keder Nath*, 39 Cal 704 (707) 16 C W N 383 15 Ind Cas 427 Jenkins, C.J observed "It is a common fashion to attempt an evasion of Court Fees Act by casting the prayers in the plaint into a declaratory shape Where the evasion is successful, it cannot be touched, but the device does not merit encouragement or favour" See also *Idol Sri Sri Gokul Nath Jiu* v *The New Birbhoom Coal Co , Ld* , 27 C W N. 927: 80 I C 589 where an attempt to evade was found

If a plaintiff can evade the Court Fees Act, he may; the remedy for that lies not in withholding a relief to which he is entitled as of right, but in procuring an amendment of the Act, *Kunj Bihari* v *Keshavlal Hiralal*, 28 Bom 567 (572) See also *Mathura Prasad* v *Ram Lal*, (1934) 11 O W N 1292 152 I C. 312: 1934 A I R 505 (Oudh) where the plaint was deliberately cast in a declaratory form to evade payment of court-fees.

An appellant may attack the whole of the decree in order to pay diminished court-fees, while his real grievance is against part of the decree requiring higher court-fee, *Nazar Mul mad* v. *Kala Ram*, 9 Lah. 563: 113 I C. 538: 1929 A.I.R (Lah.)

Banku v *Chatur*, 1924 A.I.R. 640 (Pat.); *Hasan Khan* v. *Ahmad Khan*, 1935 A I R 30 (Pesh)

The plaintiff brought a suit for recovery of possession of land with *mesne* profits detailed and specified in the plaint against certain defendants alleging that " as all the defendants have in league and collusion with one another, caused wrong entries to be made in the survey records and have dispossessed the plaintiff, they are all made parties to this suit" Held, on reference, "the claim is one only. The defendants might set up different claims, but the nature of the suit is not to be determined upon the pleas taken by the defendants but upon the frame and scope and the intentions and object of the plaintiff. *The plaint and plaint alone will determine* it and the court-fee has to be paid upon the determination and scope of it," *Mahanth Ram Narayan Gir* v *Gauri Shankar Lal and others*, 9 P.L.T. 199: 7 Patna 402 110 I C 191 1928 A I R 274 (Pat). See also *Jai Pratap Narain* v *Rabi Pratap Narain*, (1930) 52 All. 756: 1930 A L J 984: 124 I C 708: 1930 A I R 443 (All.): 1930 I.R. 564 (All).

The question of court-fees must be decided on the allegations made in the plaint and the relief actually asked for, *Radha Krishna* v *Ram Narain*, 53 All 552: 131 I.C. 604: 1931 A.I.R. 369 (All), *Asa Ram* v *Jagannath*, 15 Lah. 531: 36 P.L.R 48. 150 I C 994 1934 A I R 563 (Lah) F B.

Substance of the claim to be considered.—In order to determine the amount of court-fees payable the Court must look to the substance of the claim, and not merely the form in which the relief has been prayed for, *Kattiya Pillai* v. *Ramaswami Pillai (insane) by his wife etc*, 56 M.L J 394: 1929 M W N 286 29 L W. 584 1929 A.I R. 396 (Mad.): 119 I.C. 35 The substance and not the language of the plaint is to be looked to and that a suit for a declaration that an instrument of mortgage or sale executed by the plaintiff or a decree that has been passed against the plaintiff is not binding on him, is a suit for a declaration with a consequential relief, *Arunachellam Chetty* v *Rangaswamy Pillai*, 38 Mad. 922: 28 M.L.J. 118: 1915 M W N 118: 17 M L T 154: 28 I.C. 79 F.B.

"The question whether section 7, paragraph iv, clause (c) applies or not must depend on the substance of the claim and not on the mere words which a plaintiff may choose to introduce into his plaint with reference to it," *Chingacham Vitil Sankaran Nair* v *Chingacham Vitil Gopala Menon*, 30 Mad. 18 (20); *Nagbhusanam* v *Venkatappayya*, 68 M L.J. 95: 41 L.W. 90: 1935 A.I R 203 (Mad).

The substance and not merely the language of the plaint is to be examined by the Court when the question is whether a purely declaration is sought for or a declaration with a con-

Court below finds that an attempt has been made to evade the stamp duty, *Chokalinga* v *Achiyar*, 1 Mad. 40

The parties may resort to any camouflage which the fiscal law allows or does not forbid The Court cannot neglect the actual form of the claim and proceed to determine the question of court-fees without regard to the substance of the claim, *Pathumma Umma* v *Mohideen*, 110 I C 752. 1928 A.I.R. 929 (Mad).

In *Kalu Ram* v *Babu Lal*, (1932) 54 All 812: 1932 A L J. 684: 1932 A I R 485 (All), a Full Bench of the Allahabad High Court said: "The Court has to see what is the nature of the suit and of the reliefs claimed, having regard to the provisions of s 7 of the Court Fees Act If a substantive relief is claimed, though clothed in the garb of a declaratory suit with a consequential relief, the Court is entitled to see what is the real nature of the proceedings and if satisfied that it is not a mere consequential relief but a substantive relief it can demand the proper court-fees on that relief, irrespective of the arbitrary valuation put by the plaintiff in the plaint on the ostensible consequential relief."

Effect of events subsequent to filing of plaint.—In appeal the question is whether the decision of the primary Court is correct on the facts as they stood when the judgment was rendered, and no subsequent event or devolution of interest can affect the question because to give effect to them, should justice require it, would be the office not of an appeal but of some supplementary proceedings, *Annadamoyee* v *Sheeb Chunder*, 9 M I A 287 (301)

"In order to determine whether a suit is properly valued or not, it is necessary to confine our attention to the plaint itself and not to look to other circumstances which may subsequently influence the judgment of the Court as to the true value of the relief sought," *Rajabala Dasi* v *Radhica Charan Roy*, 40 C L J 150 (151) 1924 A I R 969 (Cal)

"The suit, when it was instituted, was in every respect regular and properly stamped, and no action on the part of the defendants subsequent to the institution of the suit could affect or prejudice the plaintiff, who in his plaint asks for no relief beyond the relief he was entitled," *Ram Adhar* v *Ram Shankar*, 26 All 215 (216, 217)

Where a plaintiff has instituted a suit for declaration of his title and two days afterwards the defendants were put into possession of the property in dispute under a decree, the subordinate Judge asked the plaintiff to amend his plaint so as to include in it a prayer for possession The plaintiff refused and his suit was dismissed which order was affirmed by the District

The parties may avail themselves of any camouflage that the law allows or does not forbid. The Court is to determine the question having regard to the substance of the claim, *Pathumma Umma* v *Mohideen*, 110 I.C. 752; 1928 A I.R. 929 (Mad)

Contra.—"Provisions in fiscal statutes are not to be so construed as to furnish a chance of escape and a means of evasion," *Nanhi Lal* v *Jogendra Chandra*, 28 C.W.N. 403; 39 C L J 222 (228) 82 I C 297: 1924 A I R. 881 (Cal.)

Effect of a finding by a Court.—Court-fees are to be assessed and levied on the footing of the plaint and not on the findings of a lower Court, *Banku Behary Pande* v *Chatur Pandey*, 5 P.L T 655 1924 Pat. C.W.N. 210: 79 I.C 913· 1924 A I R 640 (Patna), See also *Sri Sri Gokul Nath Jin* v. *The New Birbhoom Coal Company, Ltd*, 27 C.W N. 927: 80 I C 589.

Principle of determination of the nature of suit—In order to determine the amount of court-fees payable in a suit, the Court is to look at and see in each particular case what is the nature of the relief claimed, and for that purpose, it must look at the allegations that are made in the plaint, *Bagala Sundari* v. *Prosanna*, 21 C W N 375. 35 Ind Cas. 797; *Manghawal* v *Totaram*, 6 S L R 72 "For the right determination of the question at issue it is necessary to ascertain what are the object and the nature of the suit," *Bibi Phulkumari* v. *Ghanshyam*, 35 Cal 202 P C 12 C W N 169: 7 C L J. 36 See also *Pandit Brij Krishna* v *Murli Rai*, 4 Pat L J 403. "The question of court-fee must be decided on the plaint, and though it is open to the Court to say that the plaintiff has really asked for a consequential relief though he has tried to conceal it by casting the reliefs in a particular form, it is not open to the Court to say that the plaintiff should have asked for a consequential relief and should have paid the proper fee as in such a suit," *Narayan Singh* v *Saiyid Dildar Ali Khan*, 1925 A I R 210 (P.) · 80 I C 544 I L R 3 Pat 915. 6 Pat L.T 191

"The argument in substance is, that the scope of the suit is to be determined not upon the plaint but upon what may be the eventual allegations of the defendant, with the result, that a dispute as to title raised not *bona fide* but merely as a sham, intended to delay and embarras the plaintiff, converts the suit into one for declaration of title and recovery of possession In our opinion, there is no substance in the contention," *Bidhata* v. *Ram Charitar*, 12 C W N 37 (40); 6 C L J. 651. But in calculating the amount of court-fees to be paid on the memorandum of appeal, sometimes the decisions of the Courts below are taken into consideration (See *Rangomonee* v. *Jogendra*, 9 C L J. 128; [illegible] where the

Court below finds that an attempt has been made to evade the stamp duty, *Chokalinga* v *Achiyar*, 1 Mad. 40.

The parties may resort to any camouflage which the fiscal law allows or does not forbid The Court cannot neglect the actual form of the claim and proceed to determine the question of court-fees without regard to the substance of the claim, *Pathumma Umma* v. *Mohideen*, 110 I C 752: 1928 A.I R 929 (Mad).

In *Kalu Ram* v *Babu Lal*, (1932) 54 All 812 · 1932 A L J. 684: 1932 A I R 485 (All), a Full Bench of the Allahabad High Court said: "The Court has to see what is the nature of the suit and of the reliefs claimed, having regard to the provisions of s. 7 of the Court Fees Act If a substantive relief is claimed, though clothed in the garb of a declaratory suit with a consequential relief, the Court is entitled to see what is the real nature of the proceedings and if satisfied that it is not a mere consequential relief but a substantive relief it can demand the proper court-fees on that relief, irrespective of the arbitrary valuation put by the plaintiff in the plaint on the ostensible consequential relief "

Effect of events subsequent to filing of plaint.—In appeal the question is whether the decision of the primary Court is correct on the facts as they stood when the judgment was rendered, and no subsequent event or devolution of interest can affect the question because to give effect to them, should justice require it, would be the office not of an appeal but of some supplementary proceedings, *Annadamoyee* v *Sheeb Chunder*, 9 M I A 287 (301)

"In order to determine whether a suit is properly valued or not, it is necessary to confine our attention to the plaint itself and not to look to other circumstances which may subsequently influence the judgment of the Court as to the true value of the relief sought," *Rajabala Dasi* v *Radhica Charan Roy*, 40 C L J 150 (151) · 1924 A I R 969 (Cal)

"The suit, when it was instituted, was in every respect regular and properly stamped, and no action on the part of the defendants subsequent to the institution of the suit could affect or prejudice the plaintiff, who in his plaint asks for no relief beyond the relief he was entitled," *Ram Adhar* v *Ram Shankar*, 26 All 215 (216 217)

Where a plaintiff has instituted a suit for declaration of his title and two days afterwards the defendants were put into possession of the property in dispute under a decree, the subordinate Judge asked the plaintiff to amend his plaint so as to include in it a prayer for possession The plaintiff refused and his suit was dismissed which order was affirmed by the District

The parties may avail themselves of any camouflage that the law allows or does not forbid. The Court is to determine the question having regard to the substance of the claim, *Pathumma Umma v Mohideen*, 110 I.C. 752; 1928 A.I.R. 929 (Mad.)

Contra.—"Provisions in fiscal statutes are not to be so construed as to furnish a chance of escape and a means of evasion," *Nanhi Lal v Jogendra Chandra*, 28 C.W.N 403; 39 C.L.J. 222 (228) 82 I.C. 297: 1924 A.I.R. 881 (Cal.).

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Principle of determination of the nature of suit—In order to determine the amount of court-fees payable in a suit, the Court is to look at and see in each particular case what is the nature of the relief claimed, and for that purpose, it must look at the allegations that are made in the plaint, *Bagala Sundar v Prosanna*, 21 C.W.N. 375: 35 Ind. Cas. 797, *Manghama v Totaram*, 6 S.L.R. 72 "For the right determination of th question at issue it is necessary to ascertain what are the obje and the nature of the suit," *Bibi Phulkumari v. Ghanshyam*, 3 Cal. 202 P.C. 12 C.W.N. 169. 7 C.L.J. 36 See also *Pand Brij Krishna v Murli Rai*, 4 Pat. L.J. 403 "The question court-fee must be decided on the plaint; and though it is op to the Court to say that the plaintiff has really asked for a co quential relief though he has tried to conceal it by casting reliefs in a particular form, it is not open to the Court to that the plaintiff should have asked for a consequential re and should have paid the proper fee as in such a suit," *Nara Singh v Saiyid Dildar Ali Khan*, 1925 A.I.R. 210 (P) · 80 544 I.L.R. 3 Pat. 915 6 Pat.L.T. 191.

"The argument in substance is, that the scope of the suit is to be determined not upon the plaint but upon what may be the eventual allegations of the defendant, with the result, that a dispute as to title raised not *bona fide* but merely as a sham, intended to delay and embarrass the plaintiff, converts the suit into one for declaration of title and recovery of possession In our opinion, there is no substance in the contention," *Bidhata v Ram Chariter*, 12 C.W.N. 37 (40); 6 C.L.J. 651. But in calculating the amount of court-fees to be paid on the memorandum of appeal, sometimes the decisions of the Courts below are taken into consideration (See *Rangomonee v Jogendra*, 9 C.L.J. 128: 3 Ind. Cas. 304), especially in those cases where the

altered circumstances in order to shorten litigation, or to do complete justice between the parties, *Rai Charan Mandal* v. *Biswa Nath Mandal and others*, 20 C L J. 107: 26 I C 410.

Alternative Relief.—Where the plaintiff claims alternative relief, *i e*, he sues for one of the various reliefs, the largest value determines the amount of stamp Section 17 does not apply to such a suit, *Kashinath* v. *Govinda*, 15 Bom 82, *Motigavri* v. *Pranjivan*, 6 Bom 302; *Lachman* v. *Bahadur*, 16 O C. 354 (See other cases under section 17, *infra*)

Scope.—Future *mesne* profits do not fall under section 7, *Vithal Hari* v *Govind Vasudeo*, 17 Bom 41

Application of sec. 7.—Section 7 of the Court Fees Act has no application to appeals in which no amount is claimed, *Kesavarapu* v *Kotta*, 30 Mad 96. 16 M L J 458 1 M L T 311

The application of any particular clause of section 7 must depend on the substance of the claim and not on the mere words used in the plaint, *Adager Aiyanger and another*, 50 M.L.J. 406. 1926 M W N 777: 1925 A I R 1248 (Mad).

PARAGRAPH I.

Arrears of maintenance—The court-fee payable in a suit for money is on the amount of arrears claimed, *Shahazadi Begum* v. *Mahbub Ali*, 42 All 356 18 A L J 328 55 Ind Cas 809 A suit for a declaration that plaintiff is entitled to realise Rs 3,500 as maintenance allowance and for a declaration that the plaintiff has a charge on properties for Rs 3,500 is one for arrears of maintenance and *ad valorem* court-fees are payable on Rs 3,500, *Musst Udobai* v *Ram Autar*, 1934 A I R 150 (Lah) 149 I C 982 (2)

Where the plaintiff claims arrears of maintenance only but no declaration as to future right to maintenance, then the court-fee is payable under sec 7 (i) and not under sec 7 (ii) of the Court Fees Act, *Musst Bhairon Dei* v *Sewak Lal*, 107 I C 552· 1927 A I R. 623 (Oudh).

Claim for Cesses—The court-fees on a plaint claiming an ascertained sum of money as cesses are to be assessed under s 7, paragraph i and not under s 7 paragraph iv, cl (f) of the Court Fees Act, *Phularband Coal Co* v *Burrakar Coal Company*, 11 P L T 629: 128 I C 795. 1930 A I R 605 (Patna) 1931 I R 59 (Patna) See also *Butto Krishna Roy* v *The Burraker Coal Co*, 10 Patna 458, where it was held that the valuation would be the claim as given in the plaint and the valuation of the appeal whether it be considered as a claim for ascertained amount or for an account, should be the amount of the claim as given in the plaint.

Judge on appeal On further appeal the High Court held that the position of the plaintiff could not be affected by any action taken by the defendants after the suit has been filed and therefore, there neither was nor could have been any omission within the meaning of s 42 of the Specific Relief Act, the plaintiffs being as a matter of fact in possession at the date of the institution of the suit, *Surjan Singh* v *Baldeo Prosad*, 1900 All W.N. 172.

Where the right disclosed by the plaint was a right to sue for a mere declaration of title which has ceased upon the death of the widow after the filing of the suit and is replaced by a right to sue for possession an amendment would substantially alter the nature of the suit and rest on an event which did not occur until the suit has been instituted and been dealt with by the Court of first instance The amendment was refused and the High Court ordered the suit to be tried as it originally stood, *Govinda* v. *Perumdevi*, 12 Mad 136 (138).

The remedy to be granted to the plaintiff should be confined to the cause of action with which he comes into Court. The events that transpire since will not enable him either to add to his reliefs nor will they cut down the rights, *G Narayanswamy Naidu* v *Kanuru Ramayya*, 1914 M W N 870: 16 M L T. 244: 26 I C 475

Where the mortgagee-plaintiff brought a suit on the mortgage and obtained a decree and advertised the properties for sale in execution, the defendants, who were brothers of the mortgagor claimed an interest in the mortgaged properties. The execution Court ordered that the claims of the defendants to be also notified in the sale proclamation The plaintiff brought a suit for declaration that the properties in mortgage belonged exclusively to the mortgagor (*and then in execution purchased the properties himself and took possession*) The trial Court decreed the suit. Upon appeal the District Judge held that as the mortgagee had purchased the property himself in auction the declaration cannot be made. Held on appeal by the High Court, that the District Judge was wrong "The change of circumstances brought about by the plaintiff himself in purchasing the property did not take away the right to one already accrued to him, *Wamanrao Damodar* v. *Rustomji Idalji*, 21 Bom. 701 (703).

Exception —"A Court may take notice of events which have happened since the institution of the suit and afford relief to the parties on the basis of altered conditions This doctrine is of an exceptional character and is implied in cases where it is shown that the original relief claimed has by reason of subsequent change of circumstances become inappropriate, or, that it is necessary to base the decision of the Court on the

closure, *held,* that the court-fees leviable in respect of the claim is under paragraph 1 of section 7, and section 11 of the Act as regards the claim for use and occupation, *Chedi Lal* v *Kirath*, 2 All 682.

Instalment Bond—In case of Instalment Bonds the court-fee payable is on the amount claimed and not on the whole bond, *Sutto Bhama* v *Jameeruddi*, 4 W R S C C 12.

(See other cases under Sch I, Art. 1 *infra*)

Interest—No additional stamp is required on account of the claim for interest from *institution of suit until payment* It stands on the same footing as future *mesne profits* which do not fall under section 7 of the Court Fees Act, *Vithal Hari* v *Govind Basdeo*, 17 Bom 41 But Court Fees are to be paid on past interest claimed in suit See also under *"interest"* under Art 1, Schedule 1 of the Court Fees Act

Mesne Profits—In a suit for *Washilat* (mesne profits) only the court-fee payable is to be computed on the amount claimed in the plaint, *Kadir Boksh* v *Wise, Marsh*, 165· 1 Hay 370. When a suit for declaration of title and possession with mesne profits is decreed and the amount of mesne profits is directed to be ascertained in execution *held,* on an appeal by the defendant, that the memorandum of appeal should bear court-fee stamp upon the amount of the mesne profits claimed antecedent to suit The case is governed by section 7, sub-section (1), *Bunwari Lal* v *Daya Sankar*, 13 C W N 815 1 Ind Cas 670

For other cases see under section 11 of the Court Fees Act

Money—According to section 7, clause (1) of the Court Fees Act, the fees payable in a suit for money must be according to the amount claimed Where the plaintiff sued for recovery of Rs 1,123-4-0 alleged to be due to him, after deducting a sum of Rs 2 500 (said to be due by him to the defendant on account of the price of certain goods) from Rs 3,623-4-0 which he assessed as the amount of damages suffered by him by reason of the defendant's failure to perform certain contracts entered into between the parties, held that the court-fees paid *ad valorem* on the amount actually claimed are sufficient, *Qyam Uddin* v *Delhi Flour Mills Company*, 47 Ind Cas 992 175 P W R 1918

But a suit for recovery of purchase price is a suit for specific performance. *Bhasya Karlu* v *Andalammal*, (1918) M.W N 896

Mortgages—In suits for sale the court-fees payable are to be computed on the principal plus interest up to the date of suit, *Nama Bin* v *Hari Bin*, 7 Bom L R. 194 If the suit be against the heir of the mortgagor and also for sale not only of the mortgaged properties but also of other properties of the mortgagor in the name of the heir, the suit is for money and ...

be valued at the entire amount claimed plus interest and court-fees calculated *ad valorem* on that basis, *Kashinath* v. *Ganpatrao*, 18 Bom 696 When the plaintiff sued for sale on a mortgage but the trial Court passed a decree not only on the mortgage but also on two other prior mortgages for which relief was not asked for, and no provision made in the decree for the sale of the property to satisfy these debts, if paid, held on appeal, that no court-fees are payable in respect of the additional relief granted in the decree which the High Court amended and the High Court expressed an opinion that the appellant will be able to obtain a return of the additional court-fees which they have been required to pay, *Inder Sen* v. *Rikhai Singh*, 30 All 103 (1908) 28 A W N 31: 5 All L J. 18

The plaint in a suit for sale on a mortgage-bond requires *ad valorem* court-fees, to such a suit clauses v, vi, ix and x of s 7 are not applicable, *Sailendra Nath Palit* v. *Haricharan Sadhukhan*, 58 Cal 829. 52 C.L.J. 589: 130 I.C. 876: 1931 A I R 159 (Cal): 1931 I R 396 (Cal.).

A mortgagee who is one of the several mortgagees interested in a mortgage can sue for *his share of the mortgage money* by framing a suit to relate to the whole of the mortgaged property and in such a suit it is enough that he pays court-fees for his share of mortgage money only, s. 67 (d) of the T. P. Act does not prohibit such a suit, *Bansiram Jashmal* v. *Gunnia Naga Aiyar*, 59 M L J 928. 32 L W. 901: 129 I.C 45: 1930 A I.R. 985 (Mad) 1931 I R 189 (M.).

Several mortgages—When the mortgagee sues on several mortgages executed by the same mortgagor charging the same properties, the court-fee is payable on the total value of the principal sums payable under the deeds and section 17 of the Court Fees Act does not apply, *Thakur Jawahir Singh* v. *Thakur Balwant Singh*, 7 O.C 152; *Thakur Jawahir Singh* v *Baldeo Prosad*, 11 O.C 173 See cases under s. 17, *infra*

If a plaintiff has two mortgages on the same property but sues for money due on the later mortgage and asks for a declaration as to the 1st mortgage then court-fees *ad valorem* will have to be paid on the amount due on the 2nd mortgage plus fees as on a suit for a declaration on the 1st mortgage, *Iswar Dayal* v. *Anna Saheb and others*, 1935 A L J. 168: 1934 All L R. 1055: 152 I C 814: 1935 A I.R. 100 (All).

Rent.—Rent is not a sum payable periodically and does not come under paragraph II, *Kali Charan* v. *Maharaja Bahadur Keshav Prosad Singh*, 4 Pat L J. 561: 51 I.C. 15

Suit for declaration of title and injunction and rent—In *Perumal* v *Natumal*, 6 S L R. 144: 17 Ind. Cas. 44, it was held that a suit for rent and declaration of title is a suit based on distinct causes of action and so far as the suit relates to rent

it is a suit for money and comes under paragraph I of section 7 of the Court Fees Act

Valuation.—The valuation of a plaint in which money decree is claimed, is based on the actual sum claimed after allowing for deductions, such as sums expressly set off in the plaint, *D S Abraham & Co* v *Ebrahim*, 2 Rang 462: 1925 A I R 65 (R) : 84 I C 971

Note.—As to construction of the words *"other sums payable periodically"* see the cases cited under paragraph II below. The words mean that the claim must be of the nature specified in the paragraph

The distinction between paragraph I and paragraph II of this section is that while the cases referred to in paragraph I are claims for ascertained sums of money although these may have to be paid periodically the right to which have been established, the cases referred to in paragraph II refer to amounts payable periodically the right to which as to amount payable or otherwise remain to be established

The period of ten years has been fixed as period for assessment of court-fees for which the liability to pay the maintenance is indeterminate as these continue during the life time of the recipient

PARAGRAPH II.

Construction.

Other sums payable periodically—The words "other sums payable periodically" in this sub-section must be construed as implying sum payable of the nature of maintenance and annuities upon the rule of *ejusdem generis, Kali Charan* v *Kesho Prasad Singh*, 4 P L J 561: 51 I C. 15; *Dhanukdhari Tewari* v *Mani Sonar*, 6 Pat 17: 8 P L T 366: 100 Ind Cas. 913: 1927 A I R 123 (Patna), but in *Charusila Dasi* v. *Muzaffar Sheikh*, 55 C L.J. 303 (310) rent was held to be an item payable periodically

Future right to an annuity—Where the plaintiff sued for arrears of annuity plus future annuity at a certain amount per month, *held* that the court-fee on arrears was *ad valorem* on the claim, as for the future annuity the court-fee payable is to be calculated on ten times the amount annually payable, *Garya Bai* v *Har Kuar*, 6 A W.N. 228 (1886), where it was also held that excess court-fee paid in the trial Court may be allowed to be credited in favour of the party in appeal Court. See also *Narsinhacharya* v. *Swami Rayacharya*, 8 Bom H. C. A A. 55.

Annuity-arrears—Where a plaintiff prays for a declaration of right to receive a periodical payment and also asks for arrears

of the sum so payable, court-fees should be calculated under section 7 (ii) of the Court Fees Act, on ten times the amount claimed to be payable for one year in respect of the periodical payment plus *ad valorem* court-fees on the amount claimed as arrears, *Shahzadi Begum* v *Mahbub Ali*, 42 All 353 · 18 A.L J. 328 · 55 Ind Cas 809

Profits of Inam lands—The court-fees on the memorandum of appeal in a suit for a declaration that under an express agreement, the plaintiff is entitled to a share of the net income of certain Inam lands, must be calculated under section 7, paragraph II, *i e* ten times the average annual profits may be taken to be the value of the relief in respect of future mesne profits, *Fakirbhai* v *Sorabji*, P J 1883 p 205

Future emoluments attached to an office—Where the plaintiff valued his claim for payment annually of emoluments attached to a certain office at ten times the annual value, the Subordinate Judge held that the valuation cannot be made under this paragraph as the right to the emoluments is conditional on performance of service and is not a sum payable periodically and returned the plaint to be presented to proper Court This order was upheld by the High Court, *Krishna* v. *Ravi Varma*, 8 Mad. 384 But see the case of *Garijanund* v *Sailajanand*, 23 Cal. 645 (651) where it was held that an appeal, the subject-matter of which was declaration that surplus *charao* (offerings to Baidyanathji) is payable to the plaintiff by the successor-in-office, was rightly stamped with a Court-fee of rupees ten under clause iii, Act 17, Sch II of the Court Fees Act The plaintiff brought a suit for the office of the *sheik* and to certain properties attached thereto and prayed for a declaration that the defendant had no right to the office and the properties in dispute as well as for an injunction restraining the defendant from interfering with the property or doing anything in any way inconsistent with the right of the plaintiff. It appeared that the defendant was in possession of most of the properties The High Court held that the suit is not maintainable without a prayer for possession and the plaintiff was allowed to pay additional court-fees and amend the plaint, *Abdul Kadar* v. *Mahomed*, 15 Mad 15

Maintenance—Where the plaintiff brought a suit on the ground that according to the terms of the sale-deed executed by her in favour of the defendants, she and her descendants are entitled to a monthly sum of Rs. 100 from the defendants and the reliefs prayed for were (a) it may be declared as against the defendants that the plaintiff and her descendants generation after generation are entitled to receive from the defendants and their representatives maintenance which is to be a charge on the property mentioned in Schedule A; (b) a decree awarding

Rs 1,800 on account of monthly allowance at the rate of Rs 100 per month for 18 months may be passed, held, that the prayer in respect of (a) being a claim for declaration of right to a sum periodically payable comes under section 7, claus (ii) of the Court Fees Act, and court-fee is to be paid on ten times the amount claimed as payable for one year, *Shahzadi Begum* v *Mahbub Ali*, 42 All 356: 18 A L J 328: 55 Ind Cas. 809. *Musst Udobai* v *Ram Autar*, 1934 A I R 150 (Lah): *Musst Jagtaram Kuer* v *Musst Munda Kuer*, 150 I.C 378. 1934 A I R 240 (Patna)

A suit by the plaintiff—an illiterate woman—that she is entitled to a maintenance of Rs 150 a year and for amending the document purporting to have been executed by her, whereby she is alleged to have relinquished all her interests in the disputed property for Rs 150 only, is a suit for declaration with a consequential relief under section 37 of the Specific Relief Act. The valuation is to be made under section 7 (ii), although the suit is not under that paragraph, *Musst Bari Bahu* v. *Kundan Singh*, 71 Ind Cas 31: 1922 A I R 264 (Nagpore).

If a plaintiff, who was residing on a plot of land the proceeds of which went towards her maintenance under a family arrangement, sues for a declaration that she has a right to continue to receive the same and also prays for an injunction to restrain the defendants from bringing the property to sale in execution of a decree, the suit falls under s. 7, iv (c) and not under s 7, paragraph II of the Court Fees Act, *Hamfbai* v *Tulsidas*, 123 I C 240 1930 A I R 198 (S): 1930 I R 96 (S)

Suit to declare that payment of maintenance is wrongful—Where the plaintiff alleged that the payment of maintenance to defendant No 1 is illegal and wrongful, held, he must also ask for an injunction, and amend his plaint which was allowed, *Sardar Singh* v *Ganpat*, 14 Bom 395

Valuation.—The valuation of a suit for maintenance and arrears of maintenance with an additional claim to set aside an order dismissing a claim petition, for the purpose of jurisdiction is the value of the arrears in claim plus the value of the claim petition under s 12 of the Madras Civil Courts Act, s. 8 of the Suits Valuation Act does not apply, *Janaki Amma* v. *Uma and others*, 1935 A I R 219 (2) (Mad).

PARAGRAPH III.

A suit for declaration of plaintiff's right over certain moveable property in the possession of the plaintiff, but which are attached in execution of a decree and for setting aside an order refusing a claim thereto can be brought on a stamp of Rs 30

and need not be stamped according to value of the property attached, *Gulzari Mal* v. *Jadaun Rai*, 2 All. 63.

PARAGRAPH IV. (a).

Suit to recover bonds—Comes under this clause, *Nero* v. *Ramabai*, 1894 P J. p. 145, and should be valued at the amount payable under the bond, *Chet Singh* v *Mul Singh*, 10 P.R. 1871.

Suit to recover title deeds.—A suit to recover title deeds is not a suit to obtain possession of land or to deal in any way with the land itself within the meaning of section 12 of the Letters Patent, *Juggernath* v *Biraj Nath*, 4 Cal. 322. 3 C.L R. 375.

A suit to have a sale deed executed and completed or for recovery of the sale deed, is a suit for Specific Performance of a contract, *Faquir Chand* v. *Ram Dutt*, 1924 A.I R. 439 (L.). (See *under specific performance* infra)

A suit to recover pronotes standing in the name of the defendant on the allegation that they are really plaintiff's property, but not for the money due under them comes under s 7 iv (a) and not under s 7 (iii) of the Court Fees Act therefore court-fees are payable *ad valorem* on the plaintiff's valuation, *Venkata Rao* v *Sesharattama*, (1934) 58 Mad 228· 67 M L J 680: 40 L W 709 1934 M W N 1321· 152 I C 756 1934 A.I.R. 730 (Mad)

PARAGRAPH IV. (b).

N B—It should be noted that suits contemplated in this clause are suits to enforce the right to share in a joint family property This clause cannot apply if the family has already ceased to be a joint family

Partition—See also under section 7, iv (c) and Art 17 (6) of Schedule II of the Court Fees Act.

Jurisdiction—In a suit for partition, the Court can only deal with so much of the properties in suit as lie within its jurisdiction and not with properties outside British India, *Punchanan Mullick* v. *Shib Chunder*, 14 Cal 835, *Moti Ram* v. *Kanhya Mal*, 77 Ind. Cas 780

Allahabad High Court—The valuation is the valuation of the share of the plaintiff and court-fees are to be paid on that value, *Wajih-Uddin* v. *Wali-Ullah*, 24 All. 381: 22 All W.N. 85.

Bombay High Court.—A suit for partition and separate possession of joint property consisting of land, houses and moveables, does not for the purposes of court-fee fall under section 7, clause iv (b) but falls under section 7 (v) of the Court Fees Act and therefore section 8 of the Suits Valuation

Act has no application It is the market value of the lands, houses, etc, that determines the jurisdiction, *Dagdu Sakharam* v *Totaram*, 33 Bom 658 · 4 Ind. Cas 242: 11 Bom L.R 1074.

The plaint in a suit for partition and possession of plaintiff's share of the joint family property, is to be stamped with court-fees calculated *ad valorem* on the share claimed by the plaintiff. *Bulwant Ganesh* v *Nana Chintamon*, 18 Bom. 209; *Motibhai* v *Haridas*, (1896) 22 Bom 315.

Calcutta High Court—According to the Calcutta High Court no case comes under this clause, *Kirtee Chunder* v. *Anath Nath*, 8 Cal 757 11 C L R 95, if the plaintiff is in joint possession of a portion of the property sought to be partitioned then the case comes under Art 17, Cl vi of the second Schedule of the Court Fees Act, but if he is not in possession or in other words if there is complete ouster then he must sue for recovery of possession and partition and the plaintiff is to pay *ad valorem* court-fees upon the plaint (or memorandum of appeal) appropriately framed for that purpose, *Bidhata* v *Ram Charita*, 12 C W N 37 6 C L J 651, *Tulsi Bibi* v. *Furokh Bibi*, 60 C.L.J. 377, a case of partition amongst the heirs of the deceased See also *Sasi Bhusan* v *Rai Jatindra Nath*, 15 C L J 443: 10 Ind. Cas 463; *Loke Inder Singh* v *Dhakeswar Prosad*, 21 C.L.J. 253, *Beni Madhav* v *Govinda Chandra*, 22 C.W.N. 669: 46 Ind Cas 165 where it was held that the plaint in a suit for partition of joint family business and of immoveable and moveable properties is to be stamped with a court-fee of Rs. 10.

See also cases under Art 17, r 6, Sch II of this Act, "Partition"

Possession by a co-owner is *prima facie* the possession of the other co-owners and in order to make the possession by one co-owner adverse there must be ouster of the plaintiff. A person who sues for possession but is out of possession may sue, first of all, to be restored to possession of his share and pay *ad valorem* court-fees upon his plaint, whereas in the case where the plaintiff is in possession he simply sues for partition and separation of his share, *Ahmuddin Tamijuddin* v. *Amiruddin*, 44 I C. 216 (Cal)

Central Provinces—Where the plaintiff in a suit for partition is admittedly in possession and only seeks to change the form of enjoyment, a court-fee of Rs 10 under Art. 17 (vi), Sch II of the Court Fees Act is sufficient, but if the suit be for enforcement of a disputed right then *ad valorem* court-fee is payable on the value of the share, *Sripati* v. *Shridhar*, 15 C.P L R 120.

Where a Hindu son claims a partition and includes par-ties in the claim in respect of which a mortgage decree is

passed against the father, (although the *plaintiff* son was not a party to the mortgage suit) he is bound to ask for a declaration that the said decree is not binding upon him and to pay *ad valorem* court-fees on the relief, the value of which is to be the value of the mortgage decree against the father, *Ramnarayan and others* v *Lachman Prasad and others*, 102 I C. 10: 1927 A.I.R. 239 (Nag)

Lahore High Court—A suit to obtain separate possession of admitted share in the joint family property on the allegation that his right to separate possession was denied falls under s. 7, iv (b) and a court-fee of Rs 10 is insufficient, *Raghbar* v *Salig Ram*, 104 P R 1895 See *contra Fatteh Chand* v. *Bilas Rai*, 61 P.L R 1916 96 P W R 1916: 96 P.R. 1916. 34 Ind. Cas 857 where a suit was for a declaration to the effect that certain arbitration proceedings by which the father of one of the parties attempted to obtain separate possession of the properties inherited by him, are null and void and praying that joint-possession may be given to him and he valued the relief at Rs 2,500, *held* that the suit is one to enforce the right to share in joint family property and the case came under sec 7, iv (b) and the value of the suit is the amount stated in the plaint, *Dwarka* v *Krishna*, 2 Lahore, 114: 61 Ind Cas. 628: 1921 A I R 34 (Lah)

In a suit to enforce the right to share in joint family property, *i e*, a suit to be restored to joint possession or enjoyment of joint family property, court-fees would be payable under sec. 7, iv (b), *ad valorem* on the value of the relief as fixed by the plaintiff, and in a suit for partition of joint family or otherwise, where the plaintiff alleges that he is in actual or constructive possession thereof, court-fee payable would be under Art. 17, cl (vi) of Sch II of the Court Fees Act, *Asa Ram* v. *Jagannath*, 15 Lah. 531, 36 P.L R 48: 1934 A.I R 563 (Lah.): 150 I C 994 F.B.

Madras High Court—In a suit for partition of the joint family property where the plaintiff is in joint possession with other co-parceners, the court-fee is to be paid under Art I, Sch. I of the Court Fees Act and not under Art. 17, Cl VI of Sch. II of the Act, *Baganadan Rangiah* v. *Boganadan Subramania*, 21 M.L J. 21: 8 Ind. Cas 512 F.B. See also *Annamalai* v. *Krishnappa*, (1934) 67 M.L J. 858: 40 L.W. 837: 1934 M.W.N. 1373: 1935 A I R. 66 (Mad.).

And court-fees are to be paid on this basis even if the lands be in the possession of tenants, *Reference under Court Fees Act, Section 5*, 4 M.L.J. 110.

The plaintiff in a suit for partition, where part of the property to be partitioned consists of trade assets, is entitled to put

an approximate valuation on such assets in accordance with section 7, iv (f) of the Court Fees Act, *Balapattabhi Cheti* v. *Bubbaraya Chetty*, 41 M L J 433: (1921) M W N. 611: 14 L W 446 70 I C 17, but if the property to be partitioned is not family property then Sch II, Art 17 (vi) is applicable, *R. P Gill* v *L Varadaraghavayya and others*, 43 Mad 396: 38 M.L.J. 92 11 L W 174 (1920) M W N 124. 55 I.C. 517: 1920 A.I R. 585 (Mad)

Oudh Court—The valuation in a suit for partition of a grove is to be made at the value of the share of the plaintiff and not the value of the entire property, *Harabhan Dutt* v *Ladu Saran,* (1933) 9 Luck 219 10 O W N 1196: 146 I C. 582: 1933 A.I.R. 547 (Oudh)

Objection to separate items—Where the appellant, in an appeal from the final decree, attacked separate items of property allowed or disallowed, *ad valorem* court-fees should be paid on the amounts entered in the various grounds of appeal, *Md Majid Ullah* v *Md Hamid Ullah Khan,* (1924) A.I.R. 325 (Lah) 69 I C 196

Where the family had been already divided in status.—The plaint in a suit by the plaintiff stating that the family had been divided in status from 1921 and asking for a partition by metes and bounds, does not fall under s 7, iv (b) of the Court Fees Act as after the disruption of a co-percenary the family ceases to be a joint family though the family property may not have been divided by metes and bounds, *Srinivas Aiyar* v *Krishnaswami Aiyar and others*, 59 M L J 913: 1930 M W.N. 508: 33 L W 12 129 I C 462· 1931 A I R 49 (Mad): 1931 I.R. 270 (Mad) See also *T R Manikkam Pillai* v. *T. S Murugesam Pillai*, 64 M L J 576· 1933 M W.N 631: 37 L W. 748: 143 I.C. 755. 1933 A I R 431 (Mad); *The Secretary of State* v. *Lakhanna*, 64 M L J 24: 1933 M.W.N 144: 141 I.C. 80: 1933 A I R 430 (Mad): 1933 I R. 67 (Mad.).

Valuation—*Allahabad High Court*—According to the *Allahabad High Court* the valuation is the value of the share sought to be partitioned and not the entire property, *Wajih-Uddin* v. *Walli-Ullah*, 24 All 381: 22 All W.N. 88

The *Bombay High Court* has taken similar view in *Motibhai* v. *Haridas*, 22 Bom. 315.

Calcutta High Court—In a suit for partition the valuation for the purpose of jurisdiction is the value of the entire property sought to be partitioned, *Edward Dalgheish* v *Remdhari*, 4 C.L J. 509; *Rajani Kanta Bag* v. *Rajabala*, 29 C W.N. 76: 52 Cal 128, *Biraj Mohini* v *Chintamoney*, 3 C.L J. 197; 10 C.W.N. 565

The Nagpore Court has followed the Calcutta High Court. See also *Munji* v *Sitaram*, (1924) A I.R. 105 (Nagpore); *Bhagwan Appa* v *Shivappawam*, 106 I.C 770: 1927 A.I.R 248 (Nag) 23 N L R 73

The Punjab Court has taken the view of the Bombay Court in *Bhagat Ram* v. *Gakul Chand*, 150 P.R. 1908

Madras High Court—In a suit for partition of land of which plaintiff is in joint possession he is entitled to value the suit at his own estimate for purposes of jurisdiction and the Court cannot reject the same even if it be an arbitrary valuation, *Chelasamy Ramiah* v. *Chelasamy Ramasami*, F.B. 13 M L T. 128: 18 Ind Cas 368: 1913 M.W.N. 105: 24 M L J. 233; *Rangaish Chetty* v. *Subramaniah Chetty*, (1911) 8 I.C. 512: 21 M L J. 21 F.B

Where there is no ouster by the defendant of the plaintiffs from the joint possession of the joint family property, section 7 (iv) (b) applies to the case The proper test to see whether section 7, iv (b) applies will be whether if the plaint state of affairs continued for 12 years the plaintiff would be barred from suit. Where the plaint is on the footing that the right to a share exists admittedly and has never been denied and the plaintiff is merely suing to enforce that right to share, a mere statement by the plaintiff in an affidavit filed more than a year after the institution of the suit that he is out of enjoyment of the profits does not affect the question—*P M Ramakrishna Iyer* v. *Muthuswamy Iyer*, 1925 A.I.R 468 (Mad): 86 I C 627: 21 L W. 207

Patna High Court—The value for the purpose of jurisdiction of a suit for partition pure and simple, where the plaintiff is in joint possession of his share and there is no dispute as to title or share, is the value of the whole of the property sought to be partitioned, (*Dukhi Singh* v. *Harihar Sah*, 5 P.L J 546: 1921 Pat C.W.N. 89: 58 Ind Cas. 226 dist. on the ground that that was a suit for declaration of title with a consequential relief), *Ranjit Sahi* v. *Maulavi Quasim and others*, 72 Ind. Cas. 916: 1923 All.I.R. 342 (Patna).

In *Sindh* the value is the value of the share claimed, *Wadhumal* v. *Chellumal*, 6 S.L R. 250: 19 Ind Cas. 879.

SEC. 7, PARAGRAPH IV (c).

Scope.—"A suit in which the plaintiff in terms prays for a declaratory decree with consequential relief *prima facie* comes within clause (4), sub-clause (c) of section 7 of the Court Fees Act, but if at the same time it comes within any of the other classes of suits specified in the section, it must be treated as a suit of that description and dealt with accordingly."

The Full Bench further held that a suit for a declaration that an instrument of mortgage or sale executed by the plaintiff or a decree that has been passed against the plaintiff for a debt is not binding on him although a mere declaration may be prayed for, is none the less a suit for a declaratory decree with consequential relief, *Arunachalam Chetty and another* v. *Rangasawmy Pillai*, F B 38 Mad 922: 28 M L.J 118: 1915 M W.N. 118: 28 I C 79

History of Declaratory Suits is discussed in *Deokali Koer* v *Kedar Nath*, 39 Cal 704: 16 C W N. 838: 15 Ind. Cas. 427 But section 42 of the Specific Relief Act is not exhaustive, *Robert Rischer* v *Secretary of State for India in Council*, 22 Mad 410 P C ; *Veerama Chaneni* v *Soma Pitchayya*, 43 Mad 410 (1920) M W N 393. 58 I C 585.

The proviso to s 42 of the Specific Relief Act (Act I of 1877) is as follows.—

"Provided that no Court shall make any such declaration where the plaintiff being able to seek a further relief than a mere declaration omits to do so"

N.B.—This clause deals with declaratory decree where consequential relief has been prayed for. Both are to be taken together and not separately.

Consequential relief.—Means a substantial and immediate redemy in accordance with the title which the Court has been asked to declare, *Meerza Hyder* v. *Hussain Reza*, 24 Ind. Cas. 316 1 L W 398

The expression 'consequential relief' in sec 7 iv (c) means some relief which would follow directly from the declaration given, the valuation of which is not capable to being definitely ascertained and which is not specifically provided for anywhere in the Act and cannot be claimed independently of the declaration as a substantive relief, *Kalu Ram* v. *Babu Lal*, (1932) 54 All. 812: 1932 A.L J 684: 1932 A I.R. 485 (All): 139 I.C. 32 F.B. See also *Maung Shein* v. *Ma Lon Ton*, 9 Rang. 401: 134 I.C 1263: 1931 A I R 319 (R).

Whether the plaintiff must ask for a consequential relief in a suit for declaration depends upon the circumstances of each case, *Umarrannessa Bibi* v. *Janurannessa Bibi and others*, 37 C L J 449.

Where the plaintiff frames his suit as one for declaration only when he should have asked for a consequential relief, the Court cannot insist on his adding a prayer for consequential relief and on his paying court-fees on that basis, *Tekait Thakur Narayan Singh* v *Nawab Saiyid Dildar Ali*, 2 Pat. 915: 192" A I.R. 210 (P.): 80 I.C. 544: 6 Pat.L.T. 191. See also *Mau*

Muhammad Fahimul Huq v *Jagat Ballav Ghose*, (1922) 2 Patna 391.

Note.—It is not possible to enumerate all the consequential reliefs that may be asked I have attempted to treat them at length in the following pages

Generally they are removal of an attachment; confirmation of possession, cancellation of a document, suits to declare agreements and documents as not binding, a suit for a declaration coupled with an injunction, assessment of fair rent; the declaration that a record of rights is null and void, suits for declaration that decrees whether based on mortgage or not is not binding; suits to set aside decrees on compromise, under certain circumstances a claim for possession, cancellation of a previous deed of partition whether based on fraud or not; a suit by a minor under cetain circumstances, suit to set aside a sale under the Putni Regulation, restitution of conjugal rights; removal of a trustee, suit to set aside a deed creating trust, etc

The principle of assessment in a suit for declaration with consequential relief.—The principle of assessment of court-fee is that where a plaintiff asks for a declaration with a consequential relief, he is bound to pay an *ad valorem* fee proportional to [illegible] relieved, *Pandit Brij Krishna* v [illegible] 703 See also *Ram Sekhar* *Pr*[illegible]*y*, I L R 2 Pat 198: 73 Ind. Cas 43

The allegations in the plaint and not the nature of the defence is to be considered in determining the amount of court-fees payable, *Sivasubramania Nadar* v *Subramania Nadar*, 35 L.W 393. 1932 A I R 409 (Mad), *T R Manikkam Pillai* v. *T S Murugesam Pillai*, 64 M L J 576 37 L W 748· 1933 A I R 431 (Mad)· 1933 M W N 631 143 I C 755

The substance of the plaint is to be considered in determining whether a case falls within the scope of s 7 iv (c) of the Court Fees Act, *Srikishen Das* v *Sat Narain*, 32 P L R. 729. 135 I C. 499· 1932 A I.R 132 (Lah) See also *Mahammad Ismail* v. *Leyaquat Husain*, 1932 A L J. 165: 140 I C. 191· 1932 A I.R. 316 (All), where it was held that the question be determined on the plaint as it is and not as it should have been

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In *Srikrishna Chandra* v *Mahabir Prasad and others*, 55 All 791. 1933 A L J 673: 1933 A I R 488 (All): 149 I C 198, a Full Bench of the Allahabad High Court said "such a relief is unnecessarily added in most plaints and is not intended to mean anything more than reminding the Court of its powers to grant other reliefs even though not specially asked for. . We cannot regard it as one which requires additional court-fees nor do we consider that coupled with the declaratory relief it changes the nature of the suit "

Determination of the question of application of s. 7 iv (c) — "For the right determination of the question at issue it is necessary to ascertain what are the object and nature of the suit," *Bibi Phulkumari* v *Ghanshyam*, 35 Cal 202 35 I A. 22: 12 C W N 169 7 C L J 36· 10 Bom L R 1: 17 M L J 618: 5 A L J 10 2 M L T 506 The question whether section 7, paragraph iv (c) of the Court Fees Act applies or not must depend on the substance of the claim and not the mere words which the plaintiff may choose to introduce into his plaint, *Malikka Meladathil Kelutchammal* v *Malika Meladhathil Karnavan Kunju*, 7 M L T 177 5 Ind Cas 927 20 M L J 791 See also *Chingacham Vitil Sankaran* v *Chingachan Vitil Gopala*, 30 Mad 18, *Venkata Ramani* v *Narayansami*, 1925 M W N 276: 48 M L J 688 87 I C 660 1925 A I R 713 (Madras) See also *Secretary of State for India in Council* v *A R Lakhanna*, 141 I C 80. 1933 A I R 430 (Mad)

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In *Srikrishna Chandra* v. *Mahabir Prasad and others*, 55 All 791. 1933 A.L.J. 673: 1933 A.I.R. 488 (All.): 149 I.C. 198, a Full Bench of the Allahabad High Court said "such a relief is unnecessarily added in most plaints and is not intended to mean anything more than reminding the Court of its powers to grant other reliefs even though not specially asked for...... We cannot regard it as one which requires additional court-fees nor do we consider that coupled with the declaratory relief it changes the nature of the suit."

Determination of the question of application of s. 7 iv (c).—"For the right determination of the question at issue it is necessary to ascertain what are the object and nature of the suit," *Bibi Phulkumari* v. *Ghanshyam*, 35 Cal. 202: 35 I.A. 22: 12 C.W.N. 169: 7 C.L.J. 36: 10 Bom.L.R. 1: 17 M.L.J. 618: 5 A.L.J. 10: 2 M.L.T. 506. The question whether section 7, paragraph iv (c) of the Court Fees Act applies or not must depend on the substance of the claim and not the mere words which the plaintiff may choose to introduce into his plaint, *Malikka Meladathil Kelutchammal* v. *Malika Meladhathil Karnavan Kunji*, 7 M.L.T. 177: 5 Ind. Cas 927: 20 M.L.J. 791. See also *Chingacham Vitil Sankaran* v. *Chingachan Vitil Gopala*, 30 Mad. 18, *Venkata Ramani* v. *Narayansami*, 1925 M.W.N. 276: 48 M.L.J. 688: 87 I.C. 660: 1925 A.I.R. 713 (Madras). See also *Secretary of State for India in Council* v. *A. R. Lakhanna*, 141 I.C. 80: 1933 A.I.R. 430 (Mad.).

"For the purposes of stamp the cause of action which is stated in the plaint, and that only, must be looked at," *Mohendra Chandra Ganguly* v. *Ashutosh Ganguli*, 20 Cal. 762; *Rajabala* v. *Rodhika*, 40 C.L.J. 150: 1924 A.I.R. 969 (C.); *Banku* v. *Chatur*, 1924 A.I.R. 640 (P.); *Zinnatunnessa* v. *Girindra*, 30 Cal 788; *Musst Barkutinnissa* v. *Musst Kaniz Fatima*, I.L.R. 5 Pat 631: 98 I.C. 817: 1927 A.I.R. 140 (Patna).

The Court is to look at the nature of the relief claimed and for that purpose the allegations in the plaint only are to be considered, *Bagala Sundari* v. *Prasanna*, 21 C.W.N. 375: Ind Cas 797; *Manghammal* v. *Totaram*, 6 S.L.R. 72: Ind. Cas 773.

The actual relief is to be looked into in determining the court-fees payable without any consideration whether the suit fails or not without a consequential relief, *Brij Gopal* v *Suraj Karan*, 1932 A L J 466: 141 I.C 112: 1932 A.I.R. 560 (All); *Lakshminarayana Rai* v. *Dip Narayan Rai*, 1933 A.I.R. 350 (All) 55 All 274: 1933 A.L.J. 311.

In order to make s 7, iv (c) of the Court Fees Act applicable to a suit, it must be incumbent on the plaintiff to ask for a declaration and to perfect his rights also to ask for a consequential relief, for instance, where the plaintiff seeks relief to which he is not entitled unless and until some decree or document, or alienation of property is avoided A suit in which a declaration in that behalf is claimed is within s 7, iv (c), *Maung Shein* v *Ma Lon Ton*, 9 Rang 401· 134 I C. 1263: 1931 A.I.R. 319 (Rang)

Different Valuations.—Where the plaintiff valued the declaration and consequential relief of injunction separately and gave the sum of the two values as the value for the purposes of jurisdiction and court-fees, the proper course is to return the plaint to the plaintiff for amendment in order to give the value of the consequential relief of injunction under the last sentence of sec 7, paragraph iv and to mention that value in the plaint as the value for the purposes of jurisdiction and court-fees. If along with the injunction relief, additional conseqential relief or reliefs are prayed for, they should, of course, be also valued according to law, *M Aimuddin* v *S E S Kadira Rowther*, 1918 M W N 40: 43 Ind Cas 995, *Krishna* v *Secretary of State*, 1914 M.W N 757 16 M L T 516· 25 Ind. Cas. 375; *Chelasami Ramiah* v *Chelasami Ramasami*, 1913 M W.N 105: 24 M L J 233: 13 M L T 128: 18 Ind. Cas 363. See also *Balkrishna* v. *Jankibai*, 44 Bom 331· 22 Bom L R 289: 57 I C. 340 See also *Srikishen* v. *Satnarain*, 32 P L R. 729: 135 I.C. 499: 1932 A I R. 132 (Lah.)

The plaintiff cannot put one valuation for declaration and a different valuation for injunchion but is to put one lump valuation for both declaration and injunction and pay *ad valorem* court-fees on that lump valuation, *In re Kalipada Mookherjee*, 58 Cal. 281: 34 C.W.N 870: 1930 A I R 686 (Cal.); *Hridoy Kishore Nundy* v *Hari Bhusan Dey*, 58 C.L J. 171: 149 I.C. 1044; *Basanta Kumari Debya* v *Nalini Nath Bhattacharya*, 57 C L J. 465: 150 I C 732 See also *Gurdwara Mahant Jawala Singh* v. *Kalla Singh*, 32 P.L R 193: 133 I.C. 120: 1931 A I.R. 307 (Lah): 1931 I.R. 744 (Lah).

The Judicial Committee has held in *Phul Kumari* v. *Ghanshyam*, L.R. 35 I.A. 22: 35 Cal. 202: 12 C.W N. 169: 17 M.L J. 618 that the value of an action is its value to the plaintiff.

Valuation for jurisdiction and court-fees should be the same, *Daw Min Thwe* v. *C R M. L Chettyar Firm*, 150 I.C 1030. 1934 A I.R. 152 (Rang)

If the plaintiff has omitted to value the relief of injunction in the original Court, he can value it in the appeal Court The fact that by omitting to value it in the original Court, the plaintiff succeeded in having his case tried in a higher Court has no bearing on the question of court-fees, *Maung Nyi Maung* v. *Mandalay Municipal Committee*, 12 Rang 335: 1934 A I R 268 (Rang)

Account and Inspection of Books.—A suit merely praying for a declaration that the plaintiff is entitled to require the defendant to account to him and to permit him to inspect the books, is simply a suit for a declaratory decree without consequential relief and therefore comes within Art 17, clause (iii) of Sch II of the Court Fees Act, but if he, in addition, prays not only for such a declaration but also for an injunction for the production of books and property in their hands and for a positive decree for an account to be taken by Court, such a suit is "to obtain a declaratory decree where consequential relief is sought for," *Manohar Ganesh* v *Bawa Ram Chandra*, 2 Bom 219, *Raghunath* v *Gangadhar*, 10 Bom 60.

Attachment.—*Declaration as to attachment*—A suit for a declaration of plaintiff's right to attach a sum of money in the hands of a third person in execution of his decree against A and also for a decree for such sum against the defendant in the event of his obtaining such money before decision of suit when in fact the defendant did obtain such money, is a suit for a declaration with a consequential relief and *ad valorem* court-fee is payable, *Durgaram* v *Wakdu*, 1881 P J 98 See also *Karam Chand* v. *Uma Dutt Hans Raj*, 31 P.L R 383 129 I C. 753: 1930 A.I.R 755 (L) 1931 I R. 225 (Lah)

Removal of attachment—In a suit for removal of attachment it was held that *ad valorem* court-fee is payable as the prayer for removal of attachment is a consequential relief, *Ostoche* v. *Hari Das*, 2 All. 869

Removal of attachment and possession of a house—Held that *ad valorem* court-fee is payable as consequential relief had been asked for, *Moti Chand* v. *Dadabhai*, 11 Bom H.C. A.C. 186

Restoration of attachment—A prayer for restoration of attachment is really a prayer to set aside a summary order as such suits arise after an objection is allowed, hence court-fee of Rs 10 is payable under clause 1, Art. 17 of the second schedule of the Court Fees, Act, *Dayachand* v. *Hemchand*, 4 Bom. 515; *Dildar* v. *Narain*, 11 All. 365; *Govinda* v. *Gajraj*,

13 All 389; *Vithal Krishna* v *Balkrishen*, 10 Bom. 610. But see *contra*, *R M L M. Subramanian Chetty* v. *Maung Maung Pe*, U B R 1897—1901, Vol II, 353.

Suit to set aside an order allowing or disallowing a claim to attached property—Where a claim was preferred by the plaintiff to the attached property and the claim was lost and the plaintiff then brought a suit to establish his right to the property (although other reliefs were claimed—these were held to be redundant prayers) it was held that the case came under Clause 1, Art 17 of Sch II of the Court Fees Act, 1870, *Bibi Phulkumari* v *Ghanshyam*, P C. 35 Cal. 202: 35 I.A 22: 12 C W N 169 7 C L J. 36 This decision over-rules the older decisions, *viz*, *Muftee Jelalooddeen* v. *Shoharoollah*, 22 W.R. 422: 15 B L R Ap 1, *Ahmed Mirza* v. *A Thomas*, 13 Cal. 162 Where the plaintiff's property is attached at the instance of a creditor of its ostensible owner and the plaintiff after rejection of his claim to the property brings a suit and asks only for release of his property from attachment, the court-fee payable is rupees ten under Clause 1, Art. 17 of the second schedule of the Court Fees Act. If the ostensible owner is also joined as a party to the suit and a prayer is made against him for recovery of possession, the court-fee payable would be calculated upon the value of the property in accordance with section 7, (iv), (c) of the Court Fees Act, *Chandradhari Singh* v. *Tipon Prosad*, 43 Ind. Cas 971: 3 Pat L J. 482.

Valuation—In *Madhusudan* v. *Rakhal Chandra*, 15 Cal. 104, it was held that the amount which is in dispute settles the jurisdiction, *i e*, the amount which the execution creditor would recover, if successful, and, not the value of the property in dispute. See also *Dwarka Das* v. *Kameshar Prosad*, (1894) 17 All 69 (73)

The valuation of an appeal against decree in a suit by attaching creditor under Or. 21, rule 63 to set aside an order allowing claim to the property attached, is the value of the property sought to be made liable and not the decretal amount, *D. Subramaniam* v. *Nune Narasimham and others*, 56 M.L J. 489

Cancellation.—*Suits for Cancellation of Deeds*—See sec. 39 of the Specific Relief Act, 1877, Chap V. The prayer that the deed may be set aside is a prayer for a substantial relief, *Tacoordeen* v *Nawab Syed Ali*, 1 I.A. 192: 13 B.L R. 427: 23 W.R. 340 In a suit to declare that a sale deed is fraudulent, for an order to have it cancelled and a copy of the order be sent to the Sub-Registrar is a prayer for a consequential relief and the suit falls under sec. 7 (iv), (c) of the Court Fees Act, *Parvati Bai* v. *Visvanath*, 29 Bom 207: 6 Bom L R. 1125; *Nga Chit Wet*

v. *Kwanan*, U.B R. 1915 4th quarter, p 102: 36 Ind Cas 624; *Moung Kying* v *Po Thin*, 2 L B.R 266, see also contrary, *Kattiya Pillai* v *Ramaswami Pillai (insane) by his wife, etc*, 56 M L J. 394: 1929 M.W N. 286: 29 L W 584· 1929 A I R. 396 (Mad), where it was held that such a suit is for declaration only as it is the duty of the Court to send it to the registering officer under sec 39 of the Specific Relief Act, *In re Radha Sundar Roy* v. *Saktipada*, (1934) 39 C.W.N. 250: 62 Cal. 479.

Cancellation on the Ground of Fraud.—A suit for cancellation on the ground of fraud, coercion and undue influence falls within this clause and the court-fees are to be calculated *ad valorem* on the valuation by the plaintiff, *Samiya* v. *Minammal*, 23 Mad 490: 10 M L J. 240; *Malikka* v *Kunji*, 20 M.L J. 791: 7 M L T. 177: 5 Ind Cas 927. See also *Wallace* v. *Lakshmi Ammal*, 49 M.L J. 608: 1925 M.W N. 826: 1925 A.I R. 96 (Mad).

In *Kuber Saran* v *Raghubar*, 5 Luck. 235: 6 O W.N 885: 121 I C. 281: 1929 A I.R. 491 (Oudh): 1929 I.R. 57 (Oudh), the Oudh Chief Court said: "certain cases falling under s 39 of the Specific Relief Act are simple declaratory suits and others are declaratory suits in which consequential relief is desired" ...."where a person asks for a declaration that certain deeds are voidable against him because his consent to their execution has been caused by fraud and misrepresentation and not only asks for a declaration that these deeds are voidable but also asks for a declaration that those deeds should be cancelled and delivered up, the suit is distinctly a suit for declaration with a consequential relief." Followed in *Daya Sankar Vakil, etc.* v. *Mahammad Ibrahim Khan and others*, 141 I C. 798: 1933 A I R. 116 (Oudh) where it was further held that if the prayer be that the document shall be delivered up, cancelled and its registration set aside *ad valorem* court-fees must be paid.

The plaint in a suit for cancellation of a deed of release (*faraghkhati*) and for any other consequential relief to which the plaintiff may be found to be entitled to, is to be stamped with a court-fee calculated *ad valorem* on the valuation, *Nanak Chand* v. *Jiwan Mal*, 35 P.R. 1914: 237 P.L R 1914: 25 I.C. 435. See also *Narain* v. *Aya Putter*, 7 M.H C.R. 372, in which it was held that *ad valorem* court-fee was necessary.

A relief to have a registered instrument void or voidable with the possible result of its being delivered up and cancelled and a copy of the decree being sent to the registration office for a note by the registration officer is more than a mere declaration; it is undoubtedly a substantial relief differing from a declaratory relief, *Srikrishna Chander* v. *Mahabir Prasad*, 55 All 791: 1933 A.L J. 673: 149 I.C. 198: 1933 A.I.R. 488 (All.).

A suit for avoiding an instrument, even if there be no prayer for cancellation carries with it by implication a prayer that the Court may further use the discretion given to it by sec 39, so as to order the said instrument to be delivered up and cancelled, *Akhlaq Ahmad* v. *Musst. Karam Ilahi*, 1935 A L J 133: 153 I C 599: 1935 A.I R 207 (All.).

Deed of gift.—A suit for avoiding a registered deed of gift comes under this clause as the Court is to send a copy of the decree, in case the plaintiff succeeds, to the officer in whose office the instrument had been registered under section 39 of the Specific Relief Act and therefore a consequential relief was asked for and the plaint must be stamped with a court-fee *ad valorem* on the valuation, *Musst Noowooager* v. *Sridhar*, 3 Pat L J 194: 45 Ind Cas 238, *Parvati Bai* v. *Visvanath*, 29 Bom 207 6 Bom L R 1125 followed

A suit for declaration that a deed of gift is invalid and for possession of the properties conveyed by it, is a suit for declaration with a consequential relief, *Musst Ganga Dei* v. *Sukhdeo Prasad*, 47 All 78 22 A L J 945: 84 I C 624: 1924 A.I R. 612 (All) See *Mathura Prasad* v *Ramlal*, 11 O.W N. 1292: 152 I.C 709: 1934 A I R 505 (Oudh), where it was held that if the substance of the prayer is the cancellation of certain deeds, though in form the suit is declaratory, the suit is one for a declaration with consequential relief and *ad valorem* court-fees are to be paid.

A suit by a decree-holder to the effect that the deed of gift and a sale deed executed by the judgment-debtor and the judgment-debtor's wife respectively are void and also that the property covered by the two deeds is capable of being sold in execution of his decree, is purely a suit for declaration without a consequential relief, as the prayer that the property covered by the deeds is to be declared to be capable of being attached and sold is implicit in the prayer that the two deeds conveying the property shall be held to be void and therefore the suit is a pure declaratory suit, *Ram Dayal* v. *Baldeo Prasad*, 14 O L J. 148: 8 O.W.N. 124: 130 I.C. 344: 1931 A.I.R. 72 (Oudh): 1931 I R. 152 (Oudh).

If the plaintiff really asks for cancellation of a deed of gift then the suit falls under sec. 7, (iv) (c) of the Court Fees Act, *Kamala Prasad* v. *Jagarnath Prasad*, 10 Patna 432: 130 I C. 46: 1931 A.I R 78 (Patna): 1931 I R 142 (Patna). See also *Kalu Ram* v. *Babu Lal*, 54 All. 812: 1932 A.L J. 684: 1932 A.I.R. 485 (All.) F.B., but if a plaintiff deliberately chooses to ask for a declaration only in a suit where cancellation of a deed of gift should have been asked for, he may have offended against the provisions of sec. 42 of the Specific Relief Act, but the

court-fees on the basis of a suit for declaration with consequential relief cannot be asked, *Abdul Samad Khan* v *Anjuman Islamia, Gorakhpore*, 56 All 277: 1933 A L J. 1537: 1934 A I R 58 (All) · 147 I.C 376.

Trust Deeds—The plaintiff brought a suit against the defendant to set aside the deed of endowment executed by her and to recover Rs 2,50,000 handed over by her to defendant No 1 She valued the suit at Rs 2,50,000 and paid court-fees *ad valorem* on that. The suit was decreed and the defendant appealed but stamped their memorandum of appeal with a court-fee of Rs. 10 only. The High Court held "that the defendant may not have any personal interest at all and yet the subject-matter of the appeal may be as valuable as the subject-matter of the suit" and ordered that the memorandum of appeal should be stamped with a court-fee *ad valorem* on Rs 2,50,000, *Mahomed Masik* v. *Malkai M. Ugwa*, 10 Cal. 380

A suit for cancellation of a *Samudayam* deed to which the plaintiff was not a party, is a suit for a declaration, but if injunction and accounts are asked for then the suit comes under section 7, cl iv (c) of the Court Fees Act and *ad valorem* court-fees are payable The recently added provision by the amendment Act in the Madras Council does not affect the question

A suit for removal of trustees on account of their having executed an illegal deed on behalf of the devaswom comes under Art 17, B. Sch. II of the Court Fees Act, *Vellora Karuppan Vithil* v. *Kallur Vengayil Chathukutti*, 78 I C. 118: 1924 A I R. 611 (Mad).

Suit for cancellation of a deed of Mortgage—Where one of the defendants executed in favour of another a mortgage in contravention of a stipulation in favour of the plaintiff not to alienate the property in any way without paying off the mortgage money, and the plaintiff sued for cancellation of that mortgage making both of them parties to the suit; *held* that the case fell under s 7, iv (c) of the Court Fees Act as a consequential relief has been claimed, *Chuni Lal* v. *Bodar Mal*, 2 P.R. 1886. See also *Karaman Singh* v. *Norman Cockell*, 1 C.W.N. 670; *Devidas* v. *Ramlal*, 7 N.L R. 190: 13 I.C. 864.

A suit for declaration by a member of a joint family governed by Mitakshara Law that the mortgage executed by another co-parcener of the joint family property does not bind the property mortgaged, is not necessarily a suit for cancellation but is a suit falling under Art. 17 (iii) of the 2nd Schedule of the Court Fees Act, *Sham Das* v. *Churn Das*, 1925 A.I R. 90 (L.): 78 I.C. 788.

Cancellation of a deed of partition—Where the plaintiff

A suit for avoiding an instrument, even if there be no prayer for cancellation carries with it by implication a prayer that the Court may further use the discretion given to it by sec 39, so as to order the said instrument to be delivered up and cancelled, *Akhlaq Ahmad* v *Musst. Karam Ilahi,* 1935 A L J 133 153 I C 599: 1935 A I.R 207 (All.).

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court-fees on the basis of a suit for declaration with consequential relief cannot be asked. *Abdul Samad Khan* v *Anjuman Islamia, Gorakhpore,* 56 All 277: 1933 A L J 1537 1934 A I R 58 (All): 147 I C 376

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Cancellation of a deed of partition—Where the plaintiff

amongst other prayers claimed that a previous deed of partition be cancelled, then *ad valorem* court-fee was leviable on the plaint and the memorandum of appeal, *Satish Chandra* v *Kali Dasi*, 26 C W N 177 34 C L J 529.

Cancellation of a sale deed—Where the suit is one for declaration that the sale deed was invalid and might be cancelled, the court-fee payable is *ad valorem* on the value of the relief claimed *Sit Soe and others* v. *Ma Thin*, 1924 A.I.R 378 (R.): 84 I C 201

Cancellation of instrument affecting land—In *Konaram* v. *Komappan*, 14 Mad 169, it was held that the plaint is to be stamped with court-fees calculated *ad valorem* on the value of the document as the plaintiffs would be gainers to that extent if they obtained a decree, but in *Awadhraj Singh* v. *Dharamraji Kuar*, 5 Luck 98 6 O W N. 704 it was held that in a suit for possession by cancellation of some documents the court-fees are payable as in suit for possession only

Instrument affecting title—Where the reliefs prayed were: (1) It may be held by the Court that the disputed properties form portion of the properties left by the husband of the plaintiff and that the defendant No 1 had no title thereto and that she had no right to transfer the same; (2) on determination of relief No 1, it may be held that the defendant No. 1 had no right to execute the sale deed, dated the 3rd August, 1920 and that neither it has affected the title of the plaintiff nor has defendant No 2 acquired any right thereby, *held* that the suit is one for declaration with a consequential relief as the prayers are not co-extensive but are necessary and separate, unless the plaintiff elects to delete one of them. *Khubchand Mahton* v. *Musst. Meghni*, I L R 5 Patna 493: 1926 A I.R. 453 (Patna): 98 I.C 432: 8 P.L.T. 296

A suit for a declaration that a registered deed does not affect the title of the plaintiff, is a suit for a declaration with a consequential relief. The relief claimed really comes under sec 39 of the Specific Relief Act and really asks that the deed be adjudged voidable or declared not to affect the title of the plaintiff or be set aside or cancelled, *Babu Rao* v. *Balaji Rao*, 25 N L.R. 52: 118 I.C 465: 1929 A I.R. 71 (Nag.).

The plaint in a suit for declaration and injunction filed by one grandson against two grand-daughters by another daughter of the propositus alleging that the deed of settlement in favour of the two grand-daughters is a sham and fictitious document, was correctly stamped under sec. 7, iv (c) as the deed of settlement need not be set aside, *Krishnasami Aiyangar* v. *Kuppu Ammal and another*, 1929 A.I.R. 478 (Mad): 30 L.W. 796: 120 I.C. 378: 1930 I.R. 10 (Mad).

Cancellation of a bond executed by 3rd party.—A suit to cancel a mortgage bond executed by a third party in respect of the property to which the plaintiff in possession is entitled, is a suit for a simple declaration without consequential relief and a court-fee of Rs 10 is sufficient, *Karam Khan* v *Doryai,* 5 All 331. 3 All W N 51 F B [This case was dissented from in *Parvati Bai* v *Visvanath,* 29 Bom 207, but it appears that in that case the contest was between the parties to the instrument], see also *Arunachellam* v *Rangasami,* 38 Mad 922 (924) 28 M L J 118 28 I C 79, *Sham Das* v *Mohant Charan Das,* 78 I C 782 1925 A I R 90 (L), *Venkata Ramani* v *Narayansami,* 1925 M W N 276 48 M L J 688: 21 L W 649a 87 I C 660 1925 A I R 164 (Madras), *Balakrishna Nair* v *Vishu Nambudri,* 132 I C 129: 1931 A I R 375 (Mad), *Venkatasiva Rao* v *Satyanarayanamurthy,* 56 Mad 212. 139 I C 317 1932 A I R 605 (Mad)

Other documents—A plaintiff praying for possession by cancellation of some other documents to which he was no party, cannot be considered to be asking for two reliefs separately, *Awadhraj Singh* v *Musst Dharamraji Kuar and another,* 5 Luck 98 6 O W N 704 120 I C 398: 1929 A I R 419 (Oudh).

Valuation.—Where a suit to cancel a mortgage-bond for Rs 4,000 was valued at Rs 50 the Madras High Court on appeal said that the trial Court cannot refuse to accept the valuation made by the plaintiff "under the sanction of verification of the amount at which he values the relief sought nor can it revise it—a power which is limited to cases provided for by section 9, which relates to an estimate given by the plaintiff of the amount of nett profits of the land or the market value of the land, house or garden as mentioned in section 7, paragraph x and xi" . . .. Until such a rule is framed the valuation given by the plaintiff cannot be revised, *Chinnamal* v. *Madarsa Rowther,* 27 Mad 480: 14 M.L.J. 343.

In a suit for cancellation of a document securing property having a money value, the amount or value of the property for which the document was executed is the amount on which the *ad valorem* court-fee is to be paid, *V N Alagar Aiyangar* v. *Srinivasa Aiyangar and another,* 1925 A.I R. 1248 (Mad): 1925 M W N. 777: 91 I C 709.

The valuation of a suit to cancel a sale and a promissory note cannot be at the discretion of the plaintiff especially if it be manifest from the documents themselves that there is no reasonable ground for placing a low valuation, *i e*, if the valuation stated in the document sought to be cancelled be Rs. 700 and Rs 500 then the suit to cancel the documents cannot be laid at Rs 100. *Maung Nac and another* v. *Maung Kha Pu,* 142 I.C. 705: 1933 A.I.R. 40 (Ran.).

Confirmation of possession.—The plaintiff claiming under a Will applied for a certificate under Act XXVII of 1860, but the High Court refused such a certificate He brought a suit to confirm his possession by enforcing the will by setting aside the summary order, held that a consequential relief was prayed for, *Dinabandhu* v. *Rajmohini*, 16 W R 213· 8 B.L.R. Ap 32; *Jhumak Kampti* v *Debu Lal Singh*, 22 C L.J. 415; *Dinanath Das* v *Ramanath Das*, 23 C L J 561; *Rajabala* v. *Radhika*, 40 C L J 150: 1924 A I R 969 (C), *Joynarayan* v. *Grish Chandra*, 22 W R 438: 15 B L R 17, *Bohuroonissa* v. *Kurreemoonnesa*, 19 W R 17, *Tacoordeen Tewary* v *Nawab Syed Ali*, P.C. 1 I A. 192: 21 W R 340: 13 B L R 427

A prayer for confirmation of possession includes a prayer for recovery of possession if the Court thinks that the plaintiff is out of possession and is a consequential relief within the meaning of section 7, iv (c) of the Court Fees Act. It is not open to the plaintiff to put an arbitrary and incorrect valuation on the relief sought The valuation is to be fixed with reference to the value of the subject matter of the relief, *Ram Sekhar Prasad Singh and others* v *Sheonandan Dubey*, I L R. 2 Pat. 193: 1922 Pat C W N 337 69 Ind Cas 316

Valuation.—The proper valuation in a suit for confirmation of possession, is the market value of the land and not a fictitious value. *Mahabir Lal* v *Sm Duthim Rajan*, 1935 A I.R. 191 (Pat).

Documents.—*Suits to avoid or set aside deeds by Purdanashin lady—fraud*—Where a purdanashin lady (the plaintiff in the case) asked that the deed alleged to be executed by her but not in fact executed by her, be set aside as not genuine and also for confirmation of possession; held that the prayer for setting aside the deed is a prayer for substantial relief and Courts of justice are not justified in substituting therefor a mere declaration of the plaintiff's title, *Tacoordeen* v. *Nawab Syed Ali*, L.R. 1 I A 192: 21 W.R 340: 13 B L R 427.

When a person is induced to execute a deed other than what she intended to execute, the document is void and need not be set aside: therefore, in a suit to set aside such a document if the plaintiff—in this case a purdanashin lady—alleges that she is still in possession of the disputed property, all she is required to ask at the time of suit, is a declaration that the deed in favour of the defendant is not her deed The court-fee payable is Rs 10, *Umarannessa Bibi* v. *Janurannessa Bibi and others*, 37 C L J. 499: 76 I.C. 448: 1923 A.I.R. 362 (Cal).

Suit to set aside on the ground of fraud—A relief praying that a *Sankalp* deed executed by the plaintiff in favour of the

defendant in respect of property in the possession of the plaintiff, be declared invalid and ineffective as against her as the said deed was executed under co-ercion and undue influence exercised by the defendant, is a relief for a mere dclaration only and need be stamped accordingly, *Musst Paterji* v *Radhika Baksh Singh*, 142 I C 699: 1933 A I R 127 (Oudh) · 10 O W N 133: 1933 I.R 124 (Oudh)

A suit to declare that the deed of sale executed by the plaintiff is void and inoperative on the ground that the same was executed under undue influence and coercion, is a suit for declaration only and does not require *ad valorem* court-fee, *Rannaq Ali* v *Imamunnissa*, 9 O W N. 440

Suits to declare agreement not binding—The plaint in a suit for a declaration that an agreement is not binding upon the plaintiffs and for any other relief which the Court considers proper, is to be stamped *ad valorem* on the value of the interest of the plaintiff as the declaration of the invalidity of the agreement would afford the plaintiff relief of a very substantial character, *Parathayi* v. *Sankumani*, 15 Mad. 294.

Suits to declare documents not binding—A suit for a declaration that an instrument of mortgage executed by the plaintiff is not binding, is a suit for a declaration with a consequential relief within section 7, para. iv clause (c) of the Court Fees Act. The plaintiff is at liberty to put his own valuation, but the case might be different when the relief sought is by a person who is not a party to the bond or decree. In a case like this the suit may be properly regarded as one for declaration only, *Arunachellam* v. *Rangasami*, 38 Mad. 922 F.B : 1915 M.W.N. 118: 28 M.L.J. 118: 17 M L.T. 154: 28 Ind. Cas 79.

Lease—A suit for a declaration that leases executed in respect of debutter properties are illegal, invalid and inoperative and for obtaining possession is a suit for declaration with a consequential relief and court-fees *ad valorem* on the valuation put by the plaintiff are to be paid on the memorandum of appeal, *Sailendra Nath* v. *Surendra Nath*, (1934) 39 C.W.N. 248: 60 C.L J. 469: 1935 A.I.R. 279 (Cal.)

Forged document—If a plaintiff complains that a sale deed was forged by the defendant, that it was ordered to be registered by the District Registrar erroneously and that it be declared a forged document, the suit is a suit for mere declaration as when a person impeaches a deed as having been forged, to refer to him as being a party to it, is an obvious misuse of words, *Nagabhusanam* v. *Venkatappayya*, (1934) 68 M L.J. 95: 41 L W. 90: 1935 A I R. 203 (Mad.).

Declaration and injunction.—*Suits for ordering demolition of building*—A suit for setting aside a lease and to have buildings

thereon demolished is a suit for a declaration with a consequential relief and comes under section 7, iv (c) of the Court Fees Act, *Jogal Kishore* v. *Tale Singh*, 4 All. 320: 2 A W N. 44.

Suit for damages and injunction for interference with proprietory rights—The plaintiff brought a suit against defendants on the allegation that the defendant had cut away certain trees from a jungle belonging to him and damages for the same and injunction to restrain him from cutting any more trees, *held* that the case falls within the provisions of paragraph IV, clauses (c) and (d) of section 7 of the Court Fees Act, *Hari Sankar* v. *Kali Kumar*, 32 Cal 734. 9 C.W N. 690.

Suit for declaration and injunction.—A prayer for a permanent injunction is a prayer for a consequential relief, *Deokali* v. *Kedar Nath*, 39 Cal 704 (710) : 16 C W.N. 838: 15 Ind Cas. 427. See also *Umataul* v. *Nauji*, 11 C.W.N. 705 (707) : 6 C.L.J. 427; *Hari Sankar* v *Kali Kumar*, 32 Cal. 734: 9 C.W.N. 690; *Rai Charan* v *Kunj Behari*, 46 Ind. Cas. 884; *Saidunnessa* v *Tejendra Chandra*, 44 Ind Cas. 398; *Rajabala* v. *Radhika* 40 C L J 150 1924 A I R 969 (C), *Vachhani Keshabai* v. *Vachhani Naubha*, 33 Bom 307: 11 Bom L.R. 90: 1 Ind. Cas 108; *Rahimbai Jamalbhoy* v *Mariam*, 34 Bom 267: 12 Bom.L.R. 149; *Pherozshah* v *Wakhji*, 13 Bom L R 158; *Barru* v. *Lachman*, F B 228 P W R 1913: 111 P R. 1913: 23 P.L R. 1914. 22 Ind Cas 503, *Vaiyapuri* v. *P K Ramchandra*, 1925 A I R 1143 (Mad) · 89 I.C. 930: 21 L.W. 699.

Suit for declaration of title and injunction and rent—Where A brought a suit against B for rent on the basis of a lease and also asked for declaration of title and injunction against C as he is alleged to have prevented B from paying rent to A, *held* that the suit embraced two distinct causes of action and falls within paras. i and iv (d) of section 7 of the Court Fees Act, *Perumal* v. *Motumal*, 6 S.L.R. 144: 17 Ind Cas. 44

Property in the possession of collector and injunction—"Property having been in the possession of the Collector, it was not necessary for and allowable to the plaintiff to ask for an injunction He was entitled to ask only for a declaration of title," *Shidappa Venkatrao* v. *Rachappa Subrao*, 36 Bom. 628 (630): 14 Bom L R 757: 16 Ind. Cas 1005, affirmed on appeal to the Privy Council where their Lordships said that no consequential relief could have been asked for, *Rachappa Subrao* v. *Shidappa Subrao*, 43 Bom. 507 (516): 24 C.W.N. 33: 29 C.L.J. 452: 50 I.C. 280: 36 M.L J. 437: 17 A.L.J. 418: 21 Bom. L.R. 459: L R. 46 I.A. 24.

Police Act and Injunction—Where the plaint in substance challenged the validity of the imposition which purported to

have been made under ss 15 and 15A of the General Police Act and the mode in which the amounts of imposition are to be realised and contained prayers for declaration and permanent injunction restraining the realization of the amounts by the said method, the Subordinate Judge was of opinion that Rs 1,682 and Rs. 18,301 are the amounts of tax and compensation that remain unrealized and the suit, therefore, relates to plaintiff's liability which should be assessed at the sum-total of these two amounts and therefore, *ad valorem* court-fees should be paid on the aggregate of the said two amounts.

The High Court held, the reliefs sought for in the plaint come within s. 7, iv (c) and (d) of the Court Fees Act *Prima facie*, in accordance with the terms of that section, the amount of fees is to be computed according to the amount at which the relief sought is valued in the plaint but which is not to be an arbitrary valuation In this case the consequential relief sought for is not recovery of the amounts which have not yet been imposed—for these have not yet been realized—but a permanent injunction restraining the realization thereof by a particular process There is no knowing whether by the said process the entire amount yet unrealized will be realized The value of the injunction to the plaintiff is really the value at which the injury to the plaintiff should be assessed, *Girish Chandra Sanyal v. The Secretary of State for India in Council*, 105 I C 80· 1928 A I R. 55 (Calcutta).

Right of way and injunction—A suit for declaration of the plaintiff's right of way and drainage over a piece of land and for a mandatory injunction to remove the fences and walls built in defiance of the said right falls within s 7, iv (c) of the Court Fees Act, and the valuation should not be less than half the value of the immovable property, *In re Venkatakrishna Pather*, 25 L.W. 158: 52 M L J. 121 100 I C 263· 1927 A I R 348 (Mad).

Right to irrigate lands—A suit to declare the right of the plaintiff to irrigate his lands with water and for an injunction to restrain the defendant from cutting the embankment falls within s 7, iv (c) of the Court Fees Act and the valuation should be reasonable valuation and if an arbitrary valuation is made, then the Court has power to correct the valuation. *Ram Charter Pandey v Basgit Roy*, 11 Pat 161: 12 P L T 656 133 I C. 687: 1931 I R 399 (Pat) 1932 A I R 9 (Patna)

Declaration that the plaintiffs are lessees—A suit for a declaration that the plaintiffs are lessees for a term of five years of the lands and for a perpetual injunction to restrain the defendants from interfering with their rights, is a suit for a declaration with a consequential relief. The plaintiff can put his own

bharudhar, 126 I C. 267: 1930 A I.R 41 (Cal.): 1930 I R 715 (Cal.).

Madras amendment—A suit for a declaration and injunction in respect of immoveable property is governed by s 7, para iv, cl. (c) of the Court Fees Act and court-fees should be paid *ad valorem* on half the valuation of the properties calculated in the manner provided for by paragraph V of section 7 which means that the value is to be calculated on the market value of the property, *Bethasami Naicker* v *Nagammal*, 59 M.L.J 899: 1930 M W N 656· 33 L W. 68: 129 I C 625: 1931 A.I.R 69 (Mad): 1931 I R 289 (Mad)

Landlord and tenant.—*Assessment of rent*—Where the landlord sued his tenant for assessment of rent and for recovery of specific sums of money as damages for use and occupation of land and the Court of first instance decreed the suit at Rs 10-2 per bigha including cesses, *held* that sec 7, iv (c) applied, *i e*, the suits are suits to obtain declaratory decrees or orders where consequential reliefs are prayed, *Kali Charan* v *Maharaja Bahadur Keso Prosad Singh*, 4 Pat L J. 561· 51 I C 15

As there is no particular provision in the Court Fees Act applicable to a suit for assessment of fair and equitable rent, court-fee should be paid *ad valorem* under Schedule I of the Court Fees Act A prayer for assessment of rent is not in the nature of a declaratory relief, and therefore does not come under Art 17, iii of Schedule II of the Court Fees Act, *Dhanukdhari Tewari* v *Mani Sonar*, I L R 6 Pat 17 8 Pat L T 366. 100 I C 913 1927 A I R 123 (Patna)

Possession or in the alternative for assessment of fair and equitable rent—A suit for declaration of title and possession or in the alternative for assessment of fair and equitable rent, is a suit for declaration with a consequential relief and falls within sec 7, iv (c) of the Court Fees Act, *Dhanukdhari Tewari* v. *Mani Sonar*, I L R 6 Pat 17· 8 P L T 366 100 I C 913: 1927 A I R 123 (Patna).

BENGAL TENANCY ACT.

Section 104.—Suits for a declaration that the plaintiffs are occupancy raiyat and not tenure holders as recorded, do not come under Art 17, Sch II of the Court Fees Act and *ad valorem* court-fees are to be paid, *Pajuruddin* v. *The Secretary of State for India*, 16 C L J. 383. Suits for a declaration that the status of the plaintiffs is that of occupancy raiyats and not tenure holders as recorded under sec 104, B. T. Act and settlement of fair rent on that basis, is a suit for a declara-

valuation in such cases, *Ghulam Haidar* v. *Bishambhar Das and another*, 33 P L R 458: 140 I C. 73.

Valuation.—In a suit for a declaration of title and injunction in respect of a portion of land covered by *Miras Patta*, the valuation for the purpose of jurisdiction should be the market value of the land actually in suit and not market-value of the land comprised in the *Miras Patta*, though the effect of the decision is to set aside the *Miras Patta* as a whole, *Sarat Chandra* v *Srimati Swornamayee*, 36 Ind. Cas. 615. The plaintiff can put his own valuation, *Hari Sankar* v. *Kali Kumar*, 32 Cal 734 9 C W N 690, *Jogendra* v. *Toriatunnessa and others*, 35 C L J 144 62 I C 685· 1922 A.I R. 242 (Cal); *Balkrishna Narayan* v *Jankibai*, 44 Bom 331: 22 Bom.L R. 289: 57 Ind Cas 340; *Musst Mulkunnessa* v. *Municipal Committee, Delhi*, 118 P L R 1904; *Chinnamal* v *Madarasa Rowther*, 27 Mad 480: 14 M L J 343

A plaintiff is entitled to put his own valuations on the consequential relief of injunction A plaintiff may elect to abandon the relief of injunction and his prayer for amendment of plaint in this respect cannot be rejected, *Amdu* v *Fazal*, 99 I.C 868: 1927 A I R 375 (Nag).

A suit by an occupancy raiyat against proprietors for declaration of certain rights in land and for an injunction restraining the defendant from interfering with the plaintiff's use of those rights, *viz*, to cut grass, was valued at Rs. 1,000 for the purpose of jurisdiction, *held* that it was competent to the plaintiff to value the relief sought by him for the purpose of court-fees at Rs 130, *Barru* v *Lachman*, 228 P.W.R. 1913: 111 P.R 1913: 23 P L R 1914 22 Ind Cas. 503.

Sale in execution of a decree—A suit for a declaration that a sale in execution of a decree to which the plaintiff was a party was illegal and inoperative and that the right of the plaintiff to redeem the properties still subsists and also for an injunction to restrain the defendants from obtaining possession, is a suit for a declaration with a consequential relief and the court-fees are to be paid on the lump valuation by the plaintiff and not separately for a declaration and for an junction valued differently The Court can adopt the procedure laid down in Order 7, Rule 11, C P C *In re Kali Pada Mookherjee*, 58 Cal 281 34 C W N 870· 1930 A I R. 686 (Cal.).

Suits relating to temple—A suit for a declaration of right to the Shebaitship of a Thakur and for a permanent injunction restraining the defendants from interfering with the rights of the plaintiff, is to be valued for jurisdiction and the court-fees at the value of the debutter or such portion of it from which the plaintiffs may have been dispossessed, *Manick Chandra* v *Dam-*

bharudhar, 126 I C 267: 1930 A I.R 41 (Cal): 1930 I R. 715 (Cal)

Madras amendment—A suit for a declaration and injunction in respect of immoveable property is governed by s 7, para. iv, cl (c) of the Court Fees Act and court-fees should be paid *ad valorem* on half the valuation of the properties calculated in the manner provided for by paragraph V of section 7 which means that the value is to be calculated on the market value of the property, *Bethasami Naicker* v. *Nagammal*, 59 M.L.J. 899 1930 M W N 656. 33 L W 68 129 I C 625. 1931 A.I.R. 69 (Mad) 1931 I R 289 (Mad)

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As there is no particular provision in the Court Fees Act applicable to a suit for assessment of fair and equitable rent, court-fee should be paid *ad valorem* under Schedule I of the Court Fees Act A prayer for assessment of rent is not in the nature of a declaratory relief, and therefore does not come under Art 17, iii of Schedule II of the Court Fees Act, *Dhanukdhari Tewari* v *Mani Sonar*, I L R 6 Pat 17: 8 Pat L T. 366: 100 I C 913· 1927 A I R 123 (Patna)

Possession or in the alternative for assessment of fair and equitable rent—A suit for declaration of title and possession or in the alternative for assessment of fair and equitable rent, is a suit for declaration with a consequential relief and falls within sec 7, iv (c) of the Court Fees Act, *Dhanukdhari Tewari* v. *Mani Sonar*, I L R. 6 Pat 17: 8 P L T. 366· 100 I.C. 913: 1927 A.I.R 123 (Patna).

BENGAL TENANCY ACT.

Section 104.—Suits for a declaration that the plaintiffs are occupancy raiyat and not tenure holders as recorded, do not come under Art 17, Sch II of the Court Fees Act and *ad valorem* court-fees are to be paid, *Pajuruddin* v. *The Secretary of State for India*, 16 C L J. 383. Suits for a declaration that the status of the plaintiffs is that of occupancy raiyats and not tenure holders as recorded under sec. 104, B. T. Act and settlement of fair rent on that basis, is a suit for a declara-

tion of title with a consequential relief as the provisions of sec. 104 (H) make it clear that such suits are brought to obtain consequential relief, *viz*, the settlement of fair rent, and the plaint or the memorandum of appeal should be stamped with *ad valorem* court-fee, *Trailakyanath* v. *The Secretary of State for India*, 17 C.L.J. 426. 18 Ind Cas. 188.

Sec. 105.—Where a number of tenants were joined as defendants in a proceeding for settlement of rent under sec 104 (2) (now sec 105) of the Bengal Tenancy Act and an appeal by the landlord was preferred under sec 108 of the same Act from the decision of the Revenue Officer making all or nearly all the tenants as respondents, the appeal was dismissed by the Special Judge, on the ground that as many court-fees of rupees ten each as there are tenants defendants, have not been paid. The High Court, on a petition by the landlord *held*, "The proceedings are, under sec. 104 (2) (now. s. 105) and the Government rules, initiated, not by a plaint, but an application, and this application is not subject to an *ad valorem* court-fee duty, as suits for money are subject under the provisions of sec 7 (1) of the Court Fees Act, but, according to a notification of the Government of India No 5086 S R. published at page 157, Part IIA of the *Calcutta Gazette* of the 17th October 1894, to a court-fee of 8 annas. If then the case is not a suit at its initiation, and need not be commenced by a plaint, why should

appeal be required

ovisions of sec. 107

nue Officer in every

proceeding under Chapter X shall be a decree, but that it shall have the 'force of a decree,' which it may have without the proceeding necessarily becoming a suit. *None of the rules framed by Government under the Tenancy Act lays down that such a proceeding shall be a suit.* Rule 30 (b) merely prescribes that the proceedings shall be dealt with as a suit, that is to say, in respect of its procedure which is all that the provisions of sec. 189, clause (1) allow Government to regulate by means of a rule Rule 30 (b) cannot therefore have been intended to lay down that a proceeding under Chapter X of the Bengal Tenancy Act, shall be dealt with as a suit in respect of the court-fees payable on it If it did, this would be regulating more than the mere procedure to be followed by Revenue Officers in the discharge of a duty imposed upon them by the Act, and would be *ultra vires*," *Upadhya Thakur* v *Persidh Singh*, 23 Cal 723 F.B. (1896): *Petu Gharai* v *Ram Khelawan*, 18 Cal 667 overruled After this case sec. 105 was amended in 1898 by B. C. Act III of 1898 and sec (3) was inserted which is as follows:— "Every application under sub-sec. (1) or sub-sec. (2) shall notwithstanding anything contained in the Court Fees Act, 1879,

bear such stamp as the Government of India may, from time to time, prescribe by notification in the Gazette of India." The Government of India issued notifications 321, S R and 322, S. R., dated 19th January, 1899, which say that such applications shall bear stamp of eight annas for each tenant.

Secs. 105 and 105A.—Afterwards another Notification was issued, *i e*, Notification No 2254F published in the *Gazette of India*, dated the 10th August, 1918, Part I, page 1253 and *Calcutta Gazette*, 1922, Part I, page 1451, which provides as follows:—

S. 105. (*a*) A stamp of 12 annas for each tenant making or joining or joined in the application and

S. 105A. (*b*) If, at any time during the hearing of the application an issue is raised by the applicant under sec 105A of the said Act, in addition, a stamp to the amount of an *ad valorem* fee chargeable under Art 1, Sch. I of the Court Fees Act, 1870 as amended by Bengal Court Fees (Amendment) Act, 1922, (Act IV of 1922) subject to a maximum of twenty rupees.

The word *"tenant"* in the above notification has been construed to mean a tenancy Therefore, a stamp of eight annas is to be levied in respect of each tenancy and not in respect of each tenant, who may be a group of tenants holding a particular tenancy, *Reference under Court Fees Act, Sachhidananda Thakur* v *Mahesh Chandra Das*, 50 Cal 903: 28 C W N. 116. See also Notification No 1386 L R, dated 16th April, 1920 of the Government of Assam

For the rule in Bihar and Orissa, see the decision of Coutts, J, in S A 776 of 1920 (*Kumar Madhava Surendra Sahi* v. *Audh Kumar and others*) decided on 13th August, 1920 and Bihar and Orissa Government Notification Nos. 6422-II, T-33R; 6423-II, T-33R; 6426-II, T-33R, dated 10th July, 1926, whereby it was provided that in cases arising out of applications under sec 105A of the Tenancy Act, the court-fee payable is *ad valorem* subject to a maximum of Rs. 15

Ad valorem court-fees calculated under Art. 1, Sch. I of the Court Fees Act, as amended in Bengal subject to a maximum of Rs 20 are payable on an application under sec. 105 and sec 105A of the Bengal Tenancy Act for settlement of fair and equitable rent and for a declaration that the rents of the lands are liable to be enhanced and also that the tenants are not *mokraridars* as recorded in the Record of Right To such cases sec 7, iv (c) of the Court Fees Act is not app

cable, *Gopal Chandra Biswas* v. *Guru Charan Kirtania*, 32 C.W.N. 1136: 117 I.C. 701. 1929 A I R 141 (Cal.).

105, 105A.—*Valuation*—An applicant (a zemindar) filed an application under s. 105 of the Bengal T Act, in respect of 39 tenancies which were grouped together under s 60 (4) of the rules framed by the Bengal Government Under the Government Notification the petitioner paid 12 annas for each khatian, *i e*, she paid 39×12 annas in court-fees In her petition the applicant prayed "for settlement of fair and equitable rent claiming *inter alia* enhancement on the ground of rise in prices of staple food crops; excess rent for excess area and for correction of the entries in the Record of Rights in respect of the *jama* by incorporation of the *hajat* (or a portion of the rent kept in abeyance out of grace by the landlord) with the *jama* recorded"

On objection by the A S O the applicant paid Rs. 20 for each application in question On appeal the Special Judge held that the proper court-fees payable would be 12 annas for each tenancy plus *ad valorem* fees not exceeding Rs. 20 on the valuation to be put on the reliefs asked for in respect of each of such tenancy. On further appeal the High Court held that the prayer for settlement of fair and equitable rent and for enhancement on the ground of rise in the price of staple food crops and additional rent for additional area comes within the scope of s 105 of the Bengal T Act The prayer for correction of Record of Rights by incorporation of *hajat* comes either under s 106 or s 105A of the Bengal T Act and therefore the court-fees payable would be *ad valorem* on the valuation subject to a maximum of Rs 20 for each tenancy plus 12 annas for each tenancy The valuation of a suit if the amount is payable periodically, would be *ten times* the amount of rent or the difference in the amount of rent as the case may be. The mode of valuation provided in s 7, ix (cc) of the Court Fees Act does not apply to a case like the present, *Charusila Dassi* v. *Mozaffer Sheikh and others*, 59 Cal 997: 55 C L J. 303: 143 I.C. 37: 1932 A.I R 674 (Cal): 1933 I.R. 329 (Cal.).

Sec. 105B.—When any issue is raised under sec. 105A, the party raising it shall pay in addition to any other court-fees which he may be liable to pay, such court-fees as he would have been liable to pay if he had claimed relief under sec. 106.

Sec. 106.—A suit under sec. 106 of the Bengal Tenancy Act is a suit for a declaratory decree within the meaning of Art. 17, clause (iii) of Sch. II of the Court Fees Act, *Satis Chandra* v. *Gopal Chandra*, 12 C L.J. 638: 15 C.W.N. 110: 7 Ind. Cas. 627. In a suit under sec. 106 of the Bengal tenancy

Act, the court-fee to be paid is Rs. 10, as in a suit for declaration, *Chandi Charan* v. *Monoranjan*, 17 C.L.J. 417: 18 Ind Cas. 275. See also *Sailaja Nath* v. *Chandi Charan*, 48 Ind Cas, 552, where it was held that such suits are declaratory suits without consequential relief under Art 17, Clause iii, Sch. II, of the Court Fees Act even if the suits are transferred to Civil Courts for trial In a suit under sec 106 of the Bengal Tenancy Act *ad valorem* court-fee is payable on the valuation in the plaint, but the maximum is not to exceed rupees ten. See Notification No 1897F, dated 28th March, 1911, published at page 222, Part I of the *Gazette of India* for Bengal, and Notification No 311F for East Bengal in the *India Gazette*, Part I, page 366, but these notifications were altered by Notification No 3789 L R, dated 3rd April, 1922, *Calcutta Gazette*, 5th April, 1922, Part I, page 689, which fixed Rs 20 as the maximum fee in such cases

But in *Chandi Charan* v *Monoranjan*, 17 C L J 417 18 Ind Cas 275, it was held that the above remissions of court-fees are *ultra vires*

Chapter VII, Part III, Rule 60 (4) of the rules framed by the Government of Bengal provides that with the consent of the Revenue Officer any number of tenants, occupying land under the same landlord in the same village, may make joint applications for the settlement of rent or may be joined as defendants in the same proceedings on a similar application by the landlord, and Rules 60 (1) and 61 provide that proceedings under secs 105A and 106 of the Bengal Tenancy Act, 1885, as amended by B C Act of 1907 and 1908, shall be dealt with in all respects as suits between the parties

See also Notification No 2576|L A 25 Clause 42, *infra* for Bihar and Orissa Government

One suit under sec 106, B T Act against all tenants of a village in a body upon one plaint with one court-fee of rupees ten is not maintainable, one suit might be instituted against all such tenants as belong to the same caste or follow the same occupation and separate suits ought to have been instituted with respect to each class of tenants and separate court-fees of rupees ten should have been paid for each such suit, *Dhakeswar* v *Iswardhari Singh*, 22 C L J 57 · 30 I C 862

Where the zamindar brought suits against all the tenants of a village claiming that the tenants held at *Nagdi* rent and obtained decree and further obtained an appraisement decree against them and in subsequent settlement proceedings the settlement officer recorded the tenants as holding at *Nagdi* rent in the Record of Rights and the zamindar further obtained 59 decrees against the tenants by virtue of these Record of

quential relief as any other prayer is redundant, *Tewari Kora* v. *Bhupat*, 4 Pat L J. 302: 50 Ind. Cas 298.

Suit for a declaration that a record of right is a nullity—The plaintiffs in possession of the holding and claiming to be occupancy raiyats, brought a suit for declaration that the entry in the Record of Rights describing them as tenure-holders, is erroneous and a nullity, held that sec 111A of the Bengal Tenancy Act is to be construed strictly and as the plaintiffs asked for something more than mere declaration and one that is not contemplated by sec 111A of the Bengal Tenancy Act, they therefore must pay *ad valorem* court-fees on the valuation of the relief The plaintiffs appellants wanted to amend the plaint which was refused, *Midnapur Zemindary Co, Ltd.* v. *The Secretary of State for India*, 21 C W N 834: 44 Cal. 352: 40 Ind Cas 96

A suit for a declaration of the rights of the plaintiffs as shebaits of a Thakur and also that an entry in the Record of Right is null and void, is a suit for a declaration with a consequential relief and *ad valorem* court-fee on the valuation of the plaintiffs, is payable, *The Official Trustee of Bengal* v *Gobardhan Guchait*, 33 C W N 231 118 I C 357

Sec. 158, Cl 3.—In *Bhupendra Narayan Dutt* v. *Nemaye Chand Mondal*, it was held that court-fees on an appeal from an order under s 158, B T Act, Cl 3 are to be assessed under Article 11, Sch II of the Court Fees Act—decided by Tottenham and Ghose, JJ, on 2nd August, 1887, in M A 275 of 1887—unreported, where such an appeal was treated as an appeal from order without discussion

Sec. 108, 115B, B. T. Act.—Appeals presented under sec 104G (1) to a superior Revenue Authority and applications for revision presented under ss 108, 108A will bear a court-fee of 12 annas per tenancy under Sch II (1) (b) of the Court Fees Act (*vide* Calcutta Gazette, 1922, Part I, page 1995 and Rule 64 of the Government of Bengal rules); if the superior Revenue Authority be of lower standing than a Commissioner of a division or the Director of the Department of Land records, or if an application for revision be made to the Board under s 104A (2), the fee will be one rupee per tenancy under Schedule II (1) (c) of the Court Fees Act, Settlement Manual, 1908, Part I, Chap. VII, Rule 175, p. 54 and Appendix J in the Manual of 1917 (No 8). For the rule in Bihar and Orissa (which is similar to Bengal) see Bihar and Orissa Settlement Manual.

Sec. 149, B. T. Act.—Suit under sec. 149 (3) of the Bengal Tenancy Act by a third person is not a title suit and need not be stamped as such. Such a suit is either a suit for

injunction or else a declaratory suit, *Jagadamba* v *Protab,* 14 Cal 537. See *Tirthabasi Singh* v *Purna Chandra Nag,* 16 C.W.N. 558: 15 C L J. 501 14 I C 230

Mortgage.—Where the mortgagee sued to recover the mortgage-money and paid court-fees *ad valorem* on the plaint calculated on the amount claimed and some of the defendants appealed on the ground that the properties are not liable for the mortgage debt, *i e*, to exonerate the lands from liability, held this is a suit to release lands, therefore, a suit with a consequential relief, and *ad valorem* court-fees are to be paid on the value of the debt not exceeding the value of the property. *Venkappa* v. *Narasinha,* 10 Mad. 187

Sale.—*To exonerate properties from sale*—A suit to exonerate properties from sale under a mortgage decree is a suit for a declaration with a consequential relief and therefore the plaint is to be stamped with *ad valorem* court-fees not exceeding the value of the property, *Venkatappa* v *Narasimha,* 10 Mad 187 See also *Jugal* v *Parbhu,* 37 Cal 914 See other cases under Art 1, Sch I, *infra*

Suit for declaration that the share be exempted—Suit for establishment of plaintiff's right to 2|3 share of certain property and also for a declaration that such share shall be exempted from a certain mortgage lien falls under sec 7, iv (c) of the Court Fees Act and court-fees are to be paid on the valuation of the relief made in the plaint, *Makhan Lal* v *Surja Prosad.* 1885, 5 A W N 48 See also *Musst Shahar Banu Begum* v *Raj Bahadur Singh and others,* 1933 A I R 505 (Oudh), where such a suit was held to be a suit for possession

Protection from sale—In a suit where the plaintiff prayed that her right be established in respect of a third share of the house by virtue of a deed of gift and for her possession and enjoyment thereof being protected from sale be established, held, that a consequential relief has been asked for and *ad valorem* court-fees must be paid, *Ram Prasad* v *Sukh Dai,* 2 All 720 F B , *Lachmi Narayan* v *Gouri,* 6 All W N 154

Suit to set aside a compromise mortgage decree when the plaintiff interested only in a share—Where a mortgage decree for Rs 12,200 was passed on compromise and the plaintiffs sued to set aside the compromise decree, but his interest so affected by the decree was valued at Rs 1,300 *held,* that the plaintiffs were only liable to pay court-fees assessed upon their share of the property affected by the compromise decree, *Baukey Behary* v. *Ram Bahadur,* 4 Pat L J 101. 1918 (Pat) C W N 223: 4 Pat.L.W. 281 14 Ind Cas 891

Suit by puisne mortgagee when he was no party to prior mortgagee's suit—The plaint in a suit for a declaration by the

puisne mortgagee, who was no party to the suit by the prior mortgagee who obtained a decree final for Rs 6,818 that the prior mortgagee is not entitled to bring the property to sale and an injunction restraining the defendant (the relief for injunction was separately valued at Rs 100 and court-fees *ad valorem* on that separately paid) from selling the mortgaged properties, is to be stamped *ad valorem* on the amount of the prior mortgaged amount, *i e*, on Rs 6,818, *Jageshra* v. *Durga Prosad*, 36 All 500 · 12 A L J. 844: 24 Ind Cas 670

Priority.—In a suit for enforcing a simple mortgage bond by sale of the property, the decree of the 1st Court was that the property be sold subject to the mortgage of another defendant, *held*, on appeal by the plaintiff to get rid of the condition of priority of that defendant's mortgage, that the court-fees must be paid *ad valorem* on the value of the lien sought to be destroyed (in this case on Rs 14,000 the mortgage amount) with interest due to that defendant, *Premsukh Das* v *Shah Gopi Saran*, 4 Pat L J 323: 56 Ind Cas 786 See other cases under "Priority" under Sch I, Art 1, *infra*

Suit against a subsequent transferee who had parted with his interest—A was impleaded in a suit for sale on a mortgage as a subsequent transferee but it was found that A has parted with his interest in favour of his sons and A's only remaining interest was a right to maintenance which was made a charge upon the property in the hands of his sons The suit was dismissed as against A's sons but was decreed against A and other defendants A filed an appeal against the decree praying for a declaration that the decree be modified by granting a declaration that the plaintiffs are not entitled to get the charge sold. The Allahabad High Court held this prayer to be a prayer for a declaration with a consequential relief and ordered that *ad valorem* court-fees on the valuation of the appeal be paid. *Mukund Ram* v *Raquaiya Khatoon*, (1931) A L J 150: 131 I C 39: 1931 A.I.R. 251 (All) · 1931 I R 343 (All).

Suit by a son governed by Mitakshara Law.—The plaint in a suit by a Hindu son to recover family properties ignoring a mortgage executed by the father, need only be stamped as in a suit for possession on the value of the share of the son; separate court-fees in respect of the mortgage which the plaintiff does not seek to set aside need not be paid. *Veemal Naidu* v *The Official Receiver, Coimbatore*, 117 I.C. 800

A suit for the relief that the joint family property cannot be sold in execution of the decree, is a suit under sec. 7, iv (c) of the Court Fees Act and the value of the suit with the value of the interest of the plaintiff is the value of the property and

ad valorem court-fees are to be paid on that basis, *Munshi Mahton* v. *Lachman Lal*, 10 P.L.T. 545· 120 I.C. 765: 1929 A I R. 615 (Pat.).

A suit that the share of the plaintiff is not liable to be attached and sold in execution of a decree against his father, is a suit for a mere declaration without any consequential relief and no *ad valorem* court-fees need be paid, *Adeshwar Prasad* v. *Badami Devi*, 11 O W N 617 148 I.C. 908. 1934 A.I R. 212 (Oudh). *For cases to set aside decrees see under suits to set aside decrees*, infra

Reversioner—Where on the death of the mother, the widow of the last male holder, the daughter instituted the present suit for recovery of possession as reversioner to her father, on the allegation that the documents executed by her mother were illegal and inoperative and fraudulent and not for legal necessity and that the defendants have no right to resist the plaintiff's claim to possession of those properties on the strength of those documents and prayed that (*i*) it be declared that the plaintiff was the sole heir of her father, (*ii*) that it be declared that the defendants had no right to those properties, (*iii*) that her possession be confirmed in respect of two plots and that she may be awarded possession regarding others by ejecting the defendants from their wrongful possession, (*iv*) that *mesne profits* be awarded to her which she assessed at Rs 21,000, *held*, that the widow being dead the plaintiff in addition to the declaration necessarily seeks a consequential relief, *viz*, possession Therefore the reliefs in the present case clearly come within the purview of sec 7, cl (iv), sub-sec (c), and *ad valorem* court-fee upon the valuation of the property stated in the plaint must be paid as this valuation determines not only the jurisdiction of the Court, but also the amount of court-fees payable, *Khetra Mohan* v *Ganesh Lal*, 6 Pat L J 101 (105) 61 Ind Cas 565 2 Pat L T 607. See also *Harbans Sahu* v *Mt Lalmoni Koer*, 62 Ind Cas. 36 1922 A I R 62 (Patna) 3 P.L T. 22

A reversioner suing to recover properties from the alienee from the widow after her death, need not ask for a declaration that the alienation is void or is not binding on him He might claim possession leaving it to the defendant to plead and prove circumstances which will make the alienation binding on him Such a suit, therefore, comes under sec 7, v, and not under sec. 7, iv (c) of the Court Fees Act, *Ramusumran Prasad* v *Gobind Das*, I L R 2 Pat 125. 3 P L T 704. 1 Pat L R. 1: 1922 Pat. C W N 291. 68 Ind. Cas 700· 1922 A I R 615 (Pat.) F.B

When the reversioner is a party—If a suit by reversioners, who were parties to a decree which will be binding on them

so long as it subsists, seek to set aside the decree, the plea that the reversioner is not concerned to set aside the whole of the decree so long as the widow is alive and that as the exact value of the widow's life interest cannot properly be estimated, therefore, the provisions of Art 17 (b), Sch. II of the Court Fees Act, are applicable, was not accepted by the High Court, as the decree cannot be treated as consisting of separate and independent parts with reference to the widows and the reversioners The valuation was made under the provisions of s. 7, v. (a) of the Court Fees Act and *ad valorem* court-fees on that valuation was levied, *Venkata Narasimha Raju* v. *Chandrayya and others,* 26 L.W. 159: 53 M L J 267: 105 I C. 171: 1927 A.I R 825 (Mad): 1928 M.W N 120

Suit for declaration and for appointment of a Receiver.—See also under Art. 17, Clause iii, Second Schedule.

A relief for the appointment of a receiver is in the nature of a consequential relief, *Krishnarao* v *Musst Chandrabhagabai,* 1924 A I R. 316 (Nag)· 79 I C. 668 See also *Rup Chand Ghosh* v *Srimati Khirodamayee Dasi and others,* (1917) 27 C W N 457: 75 I C 567 *infra* under "Administration".

Effect of such an appointment—Where a receiver is appointed, the appointment operates as an injunction against the parties and persons claiming under them restraining them from interfering with the possession of the receiver except by permission of Court, *Mahomed Zahuruddin* v *Mahomed Noorooddeen,* 21 Cal 85 (91)

Appointment in a suit by reversioners—A suit by reversioner for a declaration that certain alienations are not binding on them, and for the appointment of a receiver, is one for a declaration with a consequential relief as the prayer was made to preserve the property from being wasted, and therefore *ad valorem court-fee* is payable on the valuation by the plaintiff, *Dodda Sanakappa* v *Sakravva,* 36 Ind Cas 831; *Harbans Sahu* v. *Lalmoni,* 3 P.L.T 22 62 Ind Cas 36: 1922 A.I.R. 62 (Patna). Where the reversioner sued for a declaration that certain alienations made by the Hindu widow will not affect their interest after her death, for appointment of a receiver and for restoration of the property to *status quo ante* to certain arbitration proceedings, the plaint is to be stamped with *ad valorem* court-fees calculated on the valuation of the suit by the plaintiffs, *Lakshmi Das* v. *Musst Draupadi,* 134 P.W.R. 1913: 232 P.L.R. 1913: 95 P.R 1913: 19 Ind. Cas 839 The plaint in a suit contained two prayers—1st, that certain sales by the official receiver in favour of the defendants be declared null and void and not valid in law: 2nd, that a fresh receiver be appointed and the properties be made over to him. On the

first prayer the plaintiff paid rupees ten as court-fees, *i e*, for the declaratory relief and valued that relief for the purpose of jurisdiction at Rupees 38,000 and on the second prayer, he valued the relief at Rupees 100 and paid *ad valorem* court-fee, on that valuation, *i e*, Rs 7-8, held that the proper court-fee has been paid on the plaint and court-fees *ad valorem* on Rupees 38,000 need not be paid, *Ram Swamy* v *Subramania*, 32 M L J 447. 40 I C 620 But a simple suit for injunction and for appointment of a receiver cannot be valued and therefore can be filed if the plaint is stamped with a court-fee of rupees ten, but where it is capable of valuation the Court is to call for additional stamps, *Manmathanath* v *Rohilhmoni*, 27 All 406: (1905) 25 All W N 6: 2 A L J 84.

A suit by a reversioner for declaration that certain alienations and a deed of partition, are not binding upon him and also praying for the appointment of a receiver for the management of the property, is a suit for a declaration with consequential relief, *Chhatrapali* v. *Kalap Dei*, 54 All. 232: 1931 A L J. 837: 135 I C 237· 1932 A I R. 114 (All)

A suit by the heirs in reversion of a deceased Hindu for declaration that (1) an alienation by the 1st defendant (the widow) was not binding on them, and (2) for the appointment of a receiver to take possession of the estate from the widow and manage it during her life-time, is not a suit for a declaration with a consequential relief as the prayer for the appointment of a receiver did not rest upon the specific alienation sought to be impeached but for an entirely different purpose, *Karuppa Tevar* v *Angammal and others*, 51 M L J 67: 96 I.C 129: 1926 A I R 678 (Mad)· 23 L W 581 See also *Palaniappa Chettiar* v *Settichi and others*, 141 I.C 324· 1933 A.I R. 108 (Mad).

Suit to set aside compromise.—A compromise is just as binding on the parties thereto as a decree after a contentious trial, but it is equally well settled that a consent decree cannot have greater validity than the compromise itself, *Amrita Sundari* v. *Serajuddi*, 19 C.W.N. 565 (570). Where the plaintiff brought a suit to set aside an adoption and thereby to set aside the deed of *solenama* (deed of compromise) entered into between the parties and no valuation was put upon the plaint which was filed with a court-fee of rupees ten; held, that the plaintiff ought not to be allowed to frame her suit in this way, *i e*, to seek to set aside the *solenama* and thereby aim at possession the immoveable property and bring her suit upon a stamp rupees ten as if it was a suit for setting aside *Bama Soondaree* v. *Surjo Coomar Ray*, 22 W.R.

Where the plaintiff brought a suit to set aside a decree based on a mortgage bond when he was

portion of property affected by the mortgage, *held* that the court-fee is payable on the value of the share of the plaintiff but not on the value of the entire property, *Bankey Behary* v. *Ram Bahadur*, 4 Pat L W 281: 1918 (Pat) C W.N. 223: 4 Patna L.J. 191· 44 Ind Cas. 491. A prayer that previous *solenama* and decree may be invalid is a prayer for a conseqnential relief, *Haro Gouri* v *Dukhi*, 5 Ind Cas 582 (Calcutta) See also *Satis Chandra* v *Kalidasi*, 26 C W N 177: 34 C.L J. 529

A suit for possession of certain shares in a Zamindary after cancellation of a compromise and the decree based thereon, against a Hindu widow and the alienee from her is not a suit for declaration with a consequential relief and the plaint need only be stamped as in a suit for possession only, *Awadhraj Singh* v. *Dharamraji Koer*, 5 Luck 98 6 O W N. 704: 120 I.C. 398: 1929 A I R 419 (Oudh).

The plaintiff previously had instituted a suit for possession of immoveable properties with past and future *mesne profits* or in the alternative for past and future maintenance The suit was compromised and the plaintiff withdrew the claim as regards the immoveable properties and obtained a decree for maintenance on a reduced scale and a decree was passed on the terms of the compromise The plaintiff then instituted a suit to set aside the compromise and the decree based on the compromise on the ground of fraud etc., held the proper court-fee is that payable under Art 17-A, of Schedule II of the Court Fees Act as amended in Madras by Madras Act V of 1922 as the effect of setting aside the compromise decree will be that the suit which has been withdrawn and in respect of which full court-fees on the value of the property have been paid would have to be proceeded with and that the setting aside of the compromise decree would not by itself give any property to the plaintiff but would only give her the right to prosecute a suit which according to her has been terminated in a manner which is not binding on her owing to fraud and other circumstances set out in the present plaint. An order granting permission to withdraw a suit or appeal is not a decree within sec 2, C. P. C, *Kulandai Pandichi* v. *Indram Ramaswami Pandia Thalavan*, 108 Ind Cas. 539: 51 Mad. 664: 55 M.L.J 345: 27 L W. 286: 1928 A.I R. 416 (Mad). See *Radha Krishna* v. *Ram Narain*, 53 All 552: 1931 A.L.J. 235: 131 I.C 604: 1931 A I.R. 369 (All.): 1931 I.R. 412 (All.), which was a suit by a minor to set aside a compromise and the decree based on it and was considered a suit for declaration with consequential relief. *Surajket* v. *Chandra Mal*, (1933) 1934 A L J. 955: 1934 A.I.R. 1071 (All.); but a suit to declare that the compromise entered into was the result of collusion and that the decree is null and void and also that the plaintiff is in possession of the

property, is not necessarily a suit for a declaration with consequential relief and if the prayers be for declaration only, then court-fees as in a suit for declaration need be paid, *Lakshmi Narayan Rai v. Dip Narain Rai*, 55 All. 274: 1933 A L J. 311: 1933 A.I.R. 350 (All).

Where a compromise has merged in the preliminary decree which has again merged in the final decree, then a prayer for cancellation of the compromise and the preliminary and final decrees, is not a prayer relating to distinct subjects, *Kalu Ram v. Babu Lal*, 54 All 812: 1932 A L J. 684: 1932 A I R 485 (All.) : 139 I C 32 F.B

A suit for a declaration that the compromise was illegal and in the alternative for a declaration that the lands are wakf property and also for an injunction to restrain the defendant from interfering with its management falls under s 7, para iv, cl (c) of the Court Fees Act and is to be valued at one lump sum and not separately and *ad valorem* court-fees paid on the lump valuation, *Gurdwara Mahant Jwala Singh v Kala Singh*, 32 P L R 193· 133 I C. 120 1931 A.I.R 307 (Lah): 1931 I.R 744 (Lah)

Suit to set aside decree and sales thereunder.—In *Manohar Lal v Jadunath Singh*, 33 I A 128· 28 All 585, it was held that if the result of a previous decree be found in a later suit to be not good against one of the parties to it, then it is not necessary to set aside the decree altogether but the proper decree to make was that the previous decree was not binding on the particular plaintiff concerned See also *Balkrishnadas v Ram Narain Sahu*, 30 I A 139 30 Cal 798 7 C W N 578 See also *Rajlakshmi v Katyayani*, (1910) 38 Cal 639 (668)

The plaintiff brought a suit for declaration that a certain share inherited by her from her mother is not affected by decree and sale; and if she is found not to be in possession then the same be awarded to her She valued the relief at Rupees 1,025 but paid a court-fee of rupees four and annas eight calculated at ten times the Government Revenue. held that *ad valorem* court-fees on Rupees 1,025 are payable as the property is a Mokarari property, *Bibi Kulsum v Muhammad Hamid*, 45 Ind Cas. 928 (Pat) Where the plaintiffs who are Hindus governed by the Mitakshara School, sued for a declaration that the decrees in favour of the decree-holder-defendant, amounting to over Rupees 22,000, obtained by defendant-decree-holders against themselves and their relatives was bad so far as they are concerned as they never took the loan, were not benefited by the loan, and the plaintiffs were not properly represented in the suit by the defendants-decree-holders and that share in the ancestral family property amounting to annas three and valued

at Rupees 9,000 was improperly sold in execution of the said decree, and prayed that (*i*) the orders be declared fraudulent, (*ii*) the decrees be set aside, (*iii*) sales be declared fraudulent, (*iv*) possession of the properties be given to them They paid court-fees calculated on ten times the Government revenue. The trial Court dismissed the suit holding that court-fees should be paid on Rs 22,000 The High Court on appeal, following the dictum of the Privy Council in *Phul Kumari* v *Ghanshyam*, 12 C W N 169 · 35 Cal 202 where their Lordships said that "the value of the action must mean the value to the plaintiff. But the value of the property might quite well be Rupees 1,000 while the execution debt Rupees 10,000 It is only if the execution debt is less than the value of the property that its amount affects the value of suit," *held* that the court-fees payable are on the value of the property, *i e*, on Rupees 9,000 and set aside the order of the trial Court, *Ganesh* v *Sarada*, 19 C W.N. 895: 42 Cal 370. 30 Ind Cas. 111 See also *Venkappa* v *Narasinha*, 10 Mad 187

If it be incumbent on the plaintiff to ask for a decree to be set aside, then such a prayer is a consequential relief and comes within s 7, iv (c) of the Court Fees Act, *Maung Shein* v *Ma Lon Ton*, 9 Ran 401 134 I C 1263: 1931 A I.R. 319 (Rang)

A relief for the cancellation of a decree, or for the setting aside of a decree is not a declaratory decree only The effect is not merely a declaration as to a person's character or status as contemplated by s 42, Specific Relief Act, but the effect will be to render the decree void and incapable of execution and will free the plaintiff from all further liability under it The claim is therefore, not merely for a declaratory relief falling under Art. 17 (iii), Sch. II. Nor does the relief fall under s 7, iv (c). There is no prayer for a declaration that the decree is void or for a declaration of any sort, so the relief that the decree be set aside cannot be regarded as a consequential relief in any sense of the word. The court-fees in respect of the prayer for cancellation of the decree is payable under Sch I, Art 1 on the value of the decree, *Kalu Ram* v. *Babu Lal*, 54 All. 812: 1932 A L J. 684: 1932 A I R. 485 (All): 139 I C. 32 F.B.

Suits to set aside decrees as fraudulent—Suit to set aside a mortgage decree valued at Rupees 10,000 as fraudulent and for an injunction to restrain the defendant from executing it by sale of the mortgaged properties, should be valued at the sum sought to be realized under the decree, because if the injunction is granted, plaintiff is benefited to the extent of the decree and not the value of the mortgaged properties and *ad valorem* court-fees are to be paid on that valuation, *Musst Bibi Umatul* v. *Musst Nauji*, 11 C.W.N. 707 (711): 6 C L J. 427.

Where the suit was for a declaration that the decree and sale were fraudulent and also for an injunction, and the suit was valued at the amount recoverable under the decree, *held* that the valuation was proper as the party could put his own valuation on the plaint, *Jogendra* v *Toriautnessa Bibi*, 35 C.L J 144: 62 Ind Cas. 685

In a suit for declaration that a decree amounting to Rupees 2,794 should be declared forged, illusory and unfit for execution and also for declaration that the family property valued at Rs 7,000 was not liable to be sold in execution of that decree, held that court-fees *ad valorem* on Rupees 2,749 should be paid, *i e*, on the value of the decree, *Harihar Prasad* v. *Shyam Lal*, 40 Cal 616: 21 Ind Cas 404, See also *Govinda* v. *Dhekku*, 56 Ind Cas 550. 19 N L R 15 and the judgment on *Reference under* sec 5 of the Court Fees Act in (S A F 6039 of 1923), *Sheikh Karim Baksha* v *Ishan Chandra Chakrabarti and others* decided by B B Ghose J on 10th July, 1923 (unreported)

A rent-decree was obtained by the 1st defendant against the 2nd defendant and the holding was advertised for sale; thereupon the plaintiff brought this suit for declaration that the rent decree is fraudulent and collusive and to save the holding from liability of auction-sale The plaintiff afterwards withdrew his 2nd and 3rd prayers when the question arose whether the suit is maintainable as a mere declaratory suit The Calcutta High Court said "The plaintiff is bound to ask for a consequential relief, namely, either to have the fraudulent decree set aside or to have a perpetual injunction granted to restrain the 1st defendant from executing it As pointed out by this Court in the case of *Gour Mohan* v *Dinanath*, 25 Cal 49, it is necessary for the plaintiff to ask for a consequential relief in a case of this description, because if consequential relief is not asked for it would be open to the decree-holder to proceed with the execution of the decree" and their Lordships held that the valuation for the purpose of court-fees should be at the amount at which the decree sought to be set aside was obtained, and the plaint was allowed to be amended, *Thakur Prasad* v *Punkal Singh*, S C L J 485 See contra, *Rafiquddin* v *Asgar Ali*, I L R 1 Patna 1. 63 Ind. Cas. 38 (Patna), where it was held that although the suit may not be maintainable still nothing beyond Rs 10 in court-fees can be demanded In a suit in which plaintiff asked for a declaration that a decree obtained against him and a sale held thereunder are void on the ground of fraud, held, if sale takes place, the loss to the plaintiff was the value of the interest in the property, and therefore court-fee *ad valorem* on the value of the share, is to be paid whatever may be the amount of the decree (prayer for redemption considered as a prayer for conse-

quential relief), *Brij Krishna* v. *Chowdhury Murli Rai*, 4 Pat. L.J. 703· 56 I.C. 316: 1920 A.I R 656 (Patna)

A suit for a declaration that a decree obtained by the defendants against the plaintiffs is based on fraud and deception and is not enforceable, is a suit for a declaration with a consequential relief within sec. 7, iv (c) of the Court Fees Act, *Hakim Rai* v *The Firm Ishardas-Garakh Rai and others*, 8 Lahore 531: 9 L L J 400: 102 I.C. 46: 1927 A I.R. 499 (Lahore).

A suit set aside a decree on the ground of fraud falls under sec 7, iv (c) of the Court Fees Act and *ad valorem* court-fees must be paid on the value set on the claim for the purpose of jurisdiction, *Baldeo Prosad* v *Ghasi Ram*, 16 N L R. 84: 56 Ind Cas 360: 1920 A I R 243 (Nag)

A suit to declare that an award by the arbitrators and the decree based on the award, are based on fraud and was ineffectual and inoperative against the plaintiff and also for any other relief, is a suit for a declaration with a consequential relief, *Bua Ditta* v *Ladha Mal*, 54 I C. 833: 1919 A I R 63 (Lah).

A suit for a declaration that an exparte mortgage decree is null and void and also fc[illegible] exe-cution of the decree and [illegible] the suit, is a suit for a decl[illegible] and the valuation for jurisdiction and the court-fees should be the same, *Daw Min Thwe* v *C R M C Chettyar Firm*, 150 I.C. 1030: 1934 A.I.R. 152 (Ran.).

A suit by the plaintiff praying that the decree obtained by the defendant is void and ineffectual as against him, having been obtained by fraud, is a suit for a declaration without any consequential relief, *Mahomed Ismail* v *Liyaqut Husain*, 1932 A.L.J. 165: 140 I C 191: 1932 A I R. 316 (All) See also *Sri Krishna Chandra* v. *Mahabir Prasad*, 55 All 791 · 1933 A.L J. 673 F.B.: 1933 A.I.R. 488 (All.): 149 I C 198

Decree obtained by fraud and not binding on the plaintiff.—A suit for a declaration that a money decree which has been passed *ex parte* against the plaintiffs had been obtained by fraud and is not binding on the plaintiff and also for an injunction restraining the defendant decree-holder from executing the decree, is a suit for a declaration with a consequential relief, *Jhanda Singh* v. *Gulab Mal Bhagwan Das*, 33 P L R 488: 137 I.C. 240: 1933 A.I.R. 246 (Lah.): 1932 I.R. 320 (Lah.); *Ram Nath* v. *Jaggarnath*, 1934 A.I.R. 109 (Peshwar).

Not binding—In a suit for declaration that an instrument of mortgage or sale and the decree based thereon is not binding and for an injunction restraining defendants from executing the

same, the court-fee is payable *ad valorem* and the Full Bench held, that a suit for declaration that an instrument of mortgage or sale executed by the plaintiff or a decree that has been passed against the plaintiff for a debt contracted by him is not binding on him, is a suit for a declaration with a consequential relief, *Arunachalam* v. *Rangaswamy*, 38 Mad. 922 F.B.: 28 M L J. 118: 17 M.L.T. 154: 1915 M.W.N. 118: 28 Ind Cas 79. See also *Nandu Mal* v. *Salig Ram and others*, 1922 A.I.R. 236 (Lahore).

See also the case of *Umrao* v. *Hardeo*, 29 All. 418 as interpreted in *Thakur Prosad* v. *Punkal Singh*, 8 C L J 485 (487); *Sham Das* v. *Churn Das*, 1925 A I R. 90 (Lah).

See also other cases under heading "Possession after declaration that a decree is not binding", supra

A suit for a declaration that a decree is not binding upon the plaintiff is in itself a substantial relief A suit for a declaration that a previous decree declaring certain wakfnamas to be invalid and not binding on the plaintiff does not fall under s 7, iv (c) of the Court Fees Act but comes under Art 17, Sch. II of the same Act. In such cases no further consequential relief of setting aside the decree is necessary, *Shihan* v *Abdul Alim Abed*, 58 Cal 474· 34 C W N. 1129: 53 C L J 91: 130 I.C. 369: 1930 A I R. 787 (Cal).

Suits under Mitakshara Law to set aside decrees—Suits by sons to set aside decrees based on mortgaged executed by the father (governed by Mitakshara law) and to recover possession is a suit for declaration with a consequential relief and therefore the plaintiff is bound to put a reasonable valuation on the claim and pay *ad valorem* court-fees on that valuation, *Shama Prosad* v *Sheopersan*, 5 Pat L J 394 2 Pat L W 173. 41 I C 95· 1920 A I.R 290 (Patna)

A suit by members of a joint Hindu family governed by Mitakshara law for declaration that the attachment and sale of joint ancestral property on a bond by the *Karta* is null and void, is a suit for a declaration with a consequential relief, *Surendra Nath Sing* v. *Shambehari Singh*, I L R 1 Pat 197: 1922 A I R. 404 (Pat)

When one coparcener of a joint Hindu family sued for a declaration that the usufructuary mortgage of the joint property made by another coparcener was null and void and that possession of the property be given to him and it was found that the mortgagee had already obtained a decree against the widow of the deceased mortgagor, held that when the plaintiff asks declaration as his first relief and possession as his second relief, it must be taken that in the opinion of the plaintiff, the declaration is a necessary relief and therefore, the suit falls under

s. 7, iv (c) of the Court Fees Act and court-fees *ad valorem* on the valuation is payable, *Tula Ram* v *Dwarka Das and another*, 50 All. 510: 26 All.L J. 316: 115 I.C 655: 1928 A I.R. 248 (All)

A suit for a declaration that a decree is not binding on the plaintiffs and also that the joint family property which they have obtained by right of survivorship is not open to attachment in execution of the said decree, is a suit for a declaration with a consequential relief as the result of the declaration would be to save the plaintiffs from payment of the decretal amount, *i e*, the consequential relief is implicit in the declaration asked for, *Lallo Pershad* v *Sahebdin Singh*, 8 Luck 668: 11 O W.N. 617: 1934 O L R. 396: 1934 A I.R 212 (Oudh). 150 I.C. 722.

If the substance of the plaint in a suit be to declare that a mortgage by a father governed by the Mitakshara law of inheritence and the decree based thereon, is not binding on the plaintiff (the son), who was a party to the 1st suit be for a mere declaration though in form it is not, then the suit comes under Sch II, Art 17-A (Madras Amendment) and not under s 7, iv (c) of the Court Fees Act, *The Secretary of State for India in Council* v *A R Lakhanna*, 64 M L J 24: 1933 M.W.N 144: 141 I C 80: 1933 A I R 430 (Mad): 1933 I R 67 (Mad.).

Declarations as regards decrees—If the suit be for a declaration that the decree is null and void then according to some decisions it is a suit without a consequential relief and is governed by Art 17, Clause iii of Sch II of the Act, *Shrimat Sagarji Rao* v. *S Smith*, 20 Bom 736 The Calcutta High Court took the same view in *Zinnatunnessa* v *Girindra*, 30 Cal. 788; *Bagala Sundari* v *Prasanna*, 21 C W N 375: 35 Ind. Cas 797. The former case was explained in *Umatul* v *Nauji*, 11 C W N. 705 (707): 6 C.L J 427, as rupees ten was payable only because no consequential relief was prayed for See also *Ganeshilal* v *Beni Pershad*, 22 P W R 1911 47 P L R. 1911: 10 P.R 1911.

A suit for establishment of title as regards a decree to which the plaintiff was not a party and in execution of which the properties in question were attached, is substantially a suit for mere declaration and any additional prayer as to the order of attachment and sale of properties are null and void as mere suplusage and the court-fees need not be paid under s 7, iv (c) of the Court Fees Act, *Karam Chand* v. *Uma Dutt Hans Raj*, 31 P.L R. 383: 129 I.C. 753: 1930 A.I R 755 (Lah): 1931 I R. 225 (Lah).

A suit for a declaration that the decree in favour of defendant no 1 against defendant no 2 is null and void, virtually includes a prayer for setting aside the decree and therefore

includes a consequential relief, hence court-fees are to be computed under s. 7, iv (c) of the Court Fees Act on the amount of the decree in favour of the defendant no 1, *Pandharinath Krishna v. Maroti Ganesh and another,* 145 I C 206: 1933 A.I.R. 214 (Nag.).

Valuation—A suit, to set aside a sale under Public Demands Recovery Act coupled with a claim for a share in the property sold, is to be valued on the value of the entire property to be sold and not on the value of the share claimed, *Pran Krishna v Nitya Gopal,* 1924 A I R 239 (Cal); 50 Cal 892 See also *Rajlakshmi v Katyayani,* 38 Cal 639 (667), which was a case of setting aside a consent decree

Where a decree affecting immoveable property is sought to be set aside, the subject-matter of that decree is the value of the immoveable property in that suit In such a case the statutory value should be adopted and not the market value of the property, *Venkatanarasimha Raju v Chandrayya and others,* 53 M L J 267· 26 L W 159 105 Ind Cas 171: 1927 A I R 825 (Madras)

A suit to set aside a decree falls under section 7, iv (c) of the Court Fees Act and the plaintiff can put his own valuation Under section 7, iv (c) of the Court Fees Act, a Court cannot reject, for the purpose of jurisdiction, the valuation made by a party for the purpose of court-fees, even if his valuation is arbitrary, *Pilla Kakkadu v Vedulla Chenarayya,* (1918) M W N 562· 51 Ind Cas 536 24 M L T 254 But if possession is asked for in addition to declaration that a decree is void then the court-fee payable is only as regards relief regarding possession and no separate *ad valorem* court-fee is payable on the amount of the decree in respect of which the declaration is sought, *Raja Gopala v Vijaya Raghava,* 25 Ind Cas. 683: 38 Mad. 1184

A suit for avoiding a mortgage decree to which the plaintiff was not a party, is not a suit for a declaration with a consequential relief but a suit for mere declaration and the value for the purpose of jurisdiction is the value of the property mortgaged, *Sukh Dial v Durga Das,* 113 I C 908 1929 A I R 448 (Lah)

A suit by a Zarpeshgidar to set aside a sale in execution of a rent decree against the landlord on the ground that the same is not binding on him and that nothing passed to the auction purchaser by the said sale and also for an injunction restraining the auction purchaser from taking possession is to be valued at the Zarpeshgi money (in this case Rs 300) and not at the sale price (in this case Rs 40) inasmuch as the sale had already taken place and if the auction purchaser takes

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possession, the plaintiff will be deprived of his Zarpeshgi money, *Sitaram Singh* v. *Maharajh Kesho Prasad Singh Bahadur,* 12 P.L.T. 550: 131 I.C 808: 1931 A I R 195 (Patna): 1931 I.R. 248 (Patna).

Madras Amendment, S. 7, iv (a).—A suit by the plaintiff who was a minor at the date of the previous suit, on the ground that the decree in the 1st suit is void and not binding on him as he was not properly represented in the 1st suit, is a suit coming under s. 7 (iv) (a), (Madras Amendment) so far as the decree in the 1st suit is concerned. The proper prayer as regards decree being for a declaration that the decree is not binding upon the plaintiff in the subsequent suit If possession of the property be asked for as the main relief, then such cases being specifically provided for in s 7, paragraph V, the suit is to be valued and court-fees paid under that paragraph. Per *Anant Krishna Aiyar, J. s. 7 (iv)* (A) is quite different *from* s 7 (iv) either (a), (b) or (c) and the proviso has been added only to s 7 (iv) S 7 (iv)(A) is a quite different provision of law, and the proviso does not operate with reference to s. 7 (iv) (A), *Venkatasiva Rao* v *Venkatanarasimha Satyanarainmurty,* (1932) 56 Mad 212: 63 M L J 764· 36 L W 225: 1932 M.W.N. 992: 139 I.C 317· 1932 A I R 605 (Mad): 1932 I.R. 643 (Mad)

A suit by the vendor to set aside a deed executed by him as also *for possession comes under s 7, iv (a) and court-fees* are to be paid accordingly. The suit does not come under s. 7, v. of the Court Fees Act and no additional court-fees are payable on that basis, *Thagachi Ammal* v *Mahammad Maideen Maricovi,* 56 Mad. 401 64 M L J 127. 142 I C. 29: 1933 A.I R. 231 (Mad.)

A suit on the allegation that the father (defendant no. 1) became insolvent and the debts of the father and the sales by the Official Receiver (defendant no 7) are not binding and these may be set aside and asking for a declaration to that effect, is a suit for declaration coming within Art 17-A of the second Schedule (Madras Amendment) and not under s. 7, iv (a), (Madras Amendment) of the Court Fees Act, *Annamalai* v. *Krishtappa,* (1934) 58 Mad 385: 67 M.L.J. 858: 40 L.W. 837: 1934 M.W.N. 1373: 1935 A I R. 66 (Mad.).

Suit on behalf of a lunatic.—Where the wife of a lunatic, sued as manager of the properties of the lunatic to set aside a deed of gift executed by her husband on the ground that the deed was null and void, *held,* that the suit is one for declaration with consequential relief and court-fees *ad valorem* are payable on the valuation under section 7, iv (c) of the Court Fees Act. The suit was framed as a suit for declaration with a

consequential relief for possession, *Ganga Dei* v. *Sukhdeo Prosad*, 22 A.L.J. 945: (1924) A.I R. 612 (All): 84 I C. 624.

Minors—Suits by.—The principle seems to be that when the minor is not bound by the deed or when it is null and void against him he need not sue to set aside the deed, in such cases a simple declaration is sufficient but when he is bound by the deed and he must have it set aside before he can obtain relief he asks for, his suit comes under this Article and *ad valorem* court-fees are payable.

A person who was a minor at the date of the execution of a mortgage deed need not sue to set aside the mortgage It is sufficient if he sues for a declaration that the mortgage is void as against him, *Yu Hock Tun* v *Yu Hock and others*, 11 Ran 66: 143 I C. 541: 1933 A I R 109 (Ran): 1933 I R 72 (Rang)

A suit by certain minor members of a Malabar tarward on the ground that a decree obtained against the *Karnarvan* and also certain minors represented by him is not binding on them and for recovery of the properties sold in execution of that decree, is a suit for a declaration with a consequential relief and the court-fees payable would be Rs 100 for declaration plus *ad valorem* court-fees on half the value of the properties under the rules of cl (5) are to be paid as provided by the amending Act as applied to Madras Presidency, *Bala Krishna Nair* v *Krishna Nambudri*, 1930 M W N 509. 132 I C. 129. 1931 A I R 38 (Mad)

In a suit by a minor for a declaration that a mortgage-deed executed in his name by his guardian is invalid against him and also for cancellation of the deed and injunction to restrain the defendant from enforcing the terms of the deed, the court-fee payable is to be calculated on the liability under the deed of the minor and the valuation for the purpose of jurisdiction is also to be determined by the same criterion The plaintiff cannot be allowed to fix a lower and arbitrary value, *Devidas* v *Ramlall*, 7 N L R 190. 13 Ind Cas 864 A suit by a member of a Malabar *tarwad* on attaining majority to set aside a *karar* entered into during his minority by the adult male members of the *tarwad*, is a suit for mere declaration and not one for a declaratory decree with consequential relief, because though a transaction, which is valid may, under certain circumstances, be cancelled by a Court, at the instance of a person not a party to it on the ground that it would throw a cloud upon his title, it is not true that such a person must get rid of the transaction by having it actually cancelled, in order to rely on its invalidity as against him. A *karar* is binding only if consideration passed in a valid exercise

of power by the *Karnarvan* otherwise it is void, *Chingacham Vittil Sankaram* v *Chingacham Vittil Gopala*, 30 Mad. 18: 1 M L T 412

Plaintiffs who are minors, in a suit to set aside a partition arrangement entered into among all the members of a tarward, so far as their shares are concerned, are to pay court-fees on the valuation of the shares of the property to be partitioned and not on the value of the whole property, *Govindan Nair* v. *Thatta Khandiyil Madhavi*, 62 M L J 712: 1932 M.W.N. 579: 1932 A I R 491 (Mad).

A suit by the plaintiff (a minor at the date of the first suit) for a declaration that the decree (mortgage) passed against him is not binding on him as having been obtained by fraud and that the old case be re-started from the point at which his guardian confessed judgment, is a suit for a declaration with a consequential relief and hence should bear *ad valorem* court-fees, *Harnam Singh* v. *Hyat*, 1925 A I.R 346 (Lah.): 86 I.C. 680 26 P L R 73

If a minor on coming of age sues to set aside certain mortgages and the decree based thereon, on the ground of collusion and negligence of the guardian, then the suit falls under s 7, iv (c) of the Court Fees Act, *Srikrishen* v *Satnarain*, 32 P L R 729 135 I.C 499: 1932 A.I R. 132 (Lah).

A suit by minors on attaining majority praying for a declation that the release executed by their mother as their guardian is invalid and for an injunction is a suit for cancellation of a document and falls within, s 7, iv (c) of the Court Fees Act, *Doraiswami Reddiar* v *Thangavelu Mudaliar*, 1929 A.I.R. 668 (Mad): 119 I C 38

A minor need not sue to set aside a transaction by a guardian to recover possession of a property, he can pray for possession and ignore the transaction and in such a suit he should not be considered as suing for cancellation of the deed, therefore s 7, iv (c) of the Court Fees Act does not apply, *Veeraraghavalu* v. *Sreeramulu*, 1928 M.W N. 389: 112 I C 96 1928 A I.R. 816 (Mad.); see also *Vennal Naidu* v. *The Official Receiver, Coimbatore*, 117 I.C. 800: 1929 A.I R 307 (Mad).

A suit for recovery of certain property and also for a declaration that the deed of gift, by virtue of which the defendants obtained possession was ineffectual against the plaintiff owing to his minority, is really a suit for possession and the relief as to cancellation was ancillary to the main relief. Therefore a court-fee of Rs 10 for the cancellation of the deed and *ad valorem* court-fees on five times the assessment (being non-permanently settled land) were sufficient, *Afzal*

Husain v. *Shafiquinnissa*, 7 O.W.N. 571: 126 I.C. 688: 1930 A.I R 368 (Oudh): 1930 I R. 416 (Oudh).

A suit for a declaration by a minor on his attaining majority that the petition of compromise and the decree based thereon are ineffectual and void against the plaintiff on the ground of fraud is a suit for mere declaration within Art 17, Cl iii of Schedule II of the Court Fees Act as the plaintiff did not ask for any consequential relief and no *ad valorem* court-fees are necessary as the question as to court-fees is to be decided on the plaint, although the suit may be dismissed for the absence of a prayer for consequential relief, *Radha Krishna* v *Ram Narain*, 53 All 552 1931 A L J. 235: 131 I C 604: 1931 A I R 369 (All): 1931 I.R. 412 (All).

A suit for a mere declaration by a minor suing through a new guardian that in the previous suit for partition of the joint Hindu family property he was not effectively represented by his guardian who was negligent and did not look after his interest in the case, is a suit for a mere declaration and need be stamped accordingly, although the object of the plaintiff may be to frustrate the effect of a decree passed against him, *Srikrishna Chandra* v. *Mahabir Prasad and others*, 55 All 791: 1933 A L J 673· 1933 A I R 488 (All)· 149 I C 198 F B

Partition.—*Cancellation of a previous deed of partition*—The plaint in a suit for declaration that the previous partition carried out under the terms of the previous decree be reversed and all the properties be brought to *hotchpot* for a fresh partition, must be stamped with an *ad valorem* court-fee as the suit is for a declaration with a consequential relief, *viz*, that the properties be restored to their original state as joint property and then brought under partition, *Huro Gowrie* v *Dukhi*, 5 Ind Cas 582 Where the plaintiff sued for cancellation of a previous deed of partition on the ground of fraud and unfairness, for declaration of exclusive title to a hardware business, its assets and properties acquired from its income, for declaration of joint title to other properties, for partition and accounts, and other incidental reliefs and the trial Court cancelled the deed of partition, and determined the question of title to properties in suit and rendered the defendant liable for accounts, held that the case does not come under clause iii of Art 17 of Sch II of the Court Fees Act, but the suit is a suit in which consequential relief has been claimed and the plaint or the memorandum of appeal is to be stamped with *ad valorem* court-fees, *Satis Chandra* v *Kali Dasi*, 26 C W N 177 34 C L J 529; *Ratanchand Rewachand* v *Anandbai*, 145 I C 777. 1933 A.I.R. 53 (Sind)

A suit for partition against father and step-brother on the allegation that the prior registered deed of partition between

the parties were voidable having been obtained by pressure and that the said partition deed is not binding on him, is substantially a suit for declaration that the prior deed of partition was not binding and for reliefs following such declaration Therefore, the court-fees are payable under s. 7, iv (c) of the Court Fees Act so far as the immovable properties are concerned and so far as the movable properties are concerned the plaintiff may value the suit in his own way. Art 17 (b) of the second Schedule is not applicable, *Sundara Ganapathi Mudali* v *Deivasi Kamana Mudali*, 1930 M.W.N. 358. 129 I.C. 824: 1931 A I R 94 (Mad.)

Partition and possession on declaration of title—The court-fee stamp in a suit for partition and possession of the plaintiff's share of joint family property is an *ad valorem* fee on the value of the plaintiff's share, *Balavant* v *Laxman*, P.J 13 (1892). Where the suit is to establish plaintiff's title to a third share and possession and partition, it was held that *ad valorem* court-fees are payable, (this was a suit by an auction purchaser), *Walliullah* v *Durga Prasad*, 28 All 340: 26 All W N 38: 3 A L J 181; *Makhan Lal* v. *Surja Prosad*, (1885) 5 A W N 48

If the suit be in essence a suit to obtain a decree for money or a decree for immoveable property then an *ad valorem* court-fee is payable, *Govinda* v *Parmeswar*, 49 Ind Cas 115. "If in the very forefront of their claim the plaintiffs ask the Court for declaration of their title and possession, then it seems to us that they are claiming under the guise of a partition suit, a declaration of their title which is the proper subject-matter of a title suit and therefore *ad valorem* court-fees are payable," *Rachhya* v *Musst Chandoo*, 6 P L J 662: 3 P L T 293, 1922 (Pat.) C W.N 65: 65 Ind Cas 294. 1923 A I R 113 (Patna). Followed in *Kanhaiya Lall* v *Baldeo Das*, 85 I C. 538: 1925 A I R 703 (Patna)

Madras Amendment—A suit for a declaration that the defendants are joint tenants and for an injunction and partition comes under s. 7, iv (c) and the valuation should be at half the value calculated in the manner provided by paragraph V of sec. 7, *Bethasami Naicker* v. *Nagammal*, 59 M L J. 899: 1930 M.W N 656: 33 L W. 68: 129 I.C. 625: 1931 A I.R. 69 (Mad.): 1931 I.R. 289 (Mad.).

A suit in which the main relief is possession and in order to succeed in this relief, the plaintiff asks that the obstacles, *i e.*, the prior partition and alienations be declared as not binding on the plaintiff is one for declaration with consequential relief; the valuation should be under s. 7, iv (c) (Madras Amendment) at half the value of the immoveable property affected by the declaration. Such a case does not come under s. 7, iv (a)

(Madras Amendment), *Karaga Gowda and other* v *Somappa Gowda and others*, 140 I.C. 585: 1933 A I.R 93 (M.): 1932 M W.N 1322

When the plaintiff is not in possession of any part of the property—"If the plaintiff is not in possession of any part of the property, she is not entitled to sue for partition without at the same time suing for possession of her share—a course entailing payment of *ad valorem* court-fees both on the plaint and the memorandum of appeal," *Rangamoni* v. *Jogendra*, 9 C L J. 128 A suit for partition is not a substitution of a suit for ejectment Where the plaintiff has got his name registered under the Land Registration Act, the weight to be given to that depends upon the facts of each case, *Loke Nath* v *Dhakeswar*, 21 C L J 253 In a suit for partition if it is established that he is not in possession at all of any portion of the joint property, that there had been a complete ouster, he must sue for recovery of possession and partition and pay *ad valorem* court-fees upon a plaint appropriately framed for the purpose The true distinction between two classes of cases, is that in one class, the plaintiff really prays for ejectment, in the other he claims a division of lands, on part of which he is in actual occupation and over the remainder of which he is in constructive possession through the co-owners There is no foundation for the contention, that mere denial of the title of the plaintiff converts a suit for partition into a suit for possession, *Bidhata Ray* v *Ram Charter*, 12 C W N 37 (41)· 6 C L J 445 10 Ind Cas 463. *Rajani Kanta* v *Rajabala*, 29 C W N 76 52 Cal 128

Where it appears that the defendants are not in possession of a portion of the property then a suit for partition is really a suit for recovery of that portion and a court-fee *ad valorem* on that share must be levied, *Dipchand Rai* v *Chhetri Lal*, 1 Pat L T 529. 56 Ind Cas 570 See also *Hassan Khan* v *Ahmad Khan*, 1935 A I R 30 (Pesh)

Effect of symbolical possession—Where there is a complete ouster, the plaintiff has to sue for recovery of possession and pay *ad valorem* court-fees upon a plaint appropriately framed for the purpose In a suit for partition symbolical possession amounts to actual possession, *Sabjan Bibi* v *Asanulla Sheikh*, 54 Cal 524 31 C W N 406: 101 I C 622 1927 A I R 411 (Cal)

Suit for declaration of title with recovery of possession.—A suit by plaintiff for declaration of title and recovery of possession of certain revenue paying estates on the allegation that although there is a valid mortgage decree on the properties still the sale of these properties in execution being in contravention of the previous adjustment of the decree, is a nullity

and therefore, the decree against the principal mortgagor under Or. 34, r. 6, C P. C. is inoperative, is a suit for possession of land within the meaning of section 7, v (a) of the Court Fees Act and the court-fees payable are on ten times the Government Revenue Such suits are not suits to obtain a declaratory decree where consequential relief is sought The Calcutta High Court said· "The plaintiffs do not seek to set aside the decree nor do they seek to obtain a declaratory decree where consequential relief is sought Their contention is that although the decree was validly made, the circumstances which led up to the sale held at the instance of the decree-holders could not in law pass their title to the execution-purchaser, and on that basis, they seek to recover possession of the property. No doubt, they seek a declaration that the personal decree could not have been made against them This declaration, however, can only be consequential to the success of their substantial claim in the suit," *Radha Kanta Saha and others* v *Debendra Narain Saha and others*, 49 Cal 880 27 C W N 567. 33 C L J 74: 70 Ind. Cas 101: 1922 A I R 506 (Calcutta).

In a suit for possession and *Wasilat* the plaintiff obtained a decree declaring his right to possession upon death of his father, held that as the decree had given consequential relief, *i e*, relief from the operation of conveyances and mortgages, which on the face of them affected the plaintiff's interest, on an appeal from the decree the memorandum should bear an *ad valorem* duty, *A B Miller* v *Akhoree Ram*, 15 W R. 412.

Where the plaintiff claimed that he was joint owner of the property in suit with the defendant and that the property had been sold without his concurrence or authority, but framed the suit as one for recovery of possession and for cancellation of sale deed, the Allahabad High Court held that the suit was a suit for possession only, as the prayer for declaration is superfluous and allowed the plaint to be amended (The case *Dhakeswar Prasad* v *Jiva Chowdhury*, 3 Pat L J. 448: 46 Ind Cas 385 is not applicable as there the declaratory relief was necessary). *Rup Narain* v. *Bishwar Nath*, 44 All. 629· 20 All L J 587: 68 Ind Cas. 265: (1921) A.I.R. 358 (Allahabad). See also *M. Ganga Dei* v. *Sukhdeo Prasad*, 22 A L J 945: 84 I C 624: 1924 A.I R. 612 (All): 47 All 78; *In re Seethayamma*, 48 Mad. 652: 47 M L J. 919: 21 L.W. 15: 85 I.C. 405: 1925 A I.R. 323 (Mad).

Where the plaintiff asks for a declaration as his first relief and possession as his second relief, it must be taken that in the opinion of his legal advisers the declaration is a necessary relief, *Tula Ram* v. *Dwarka Das*, 26 All L.J. 316: 1928 A.I R. 218 (Allahabad): 115 I C. 655: 50 All 510.

A plaint (or memorandum of appeal) in a suit for declaration of title and recovery of possession, requires *ad valorem* court-fees and not ten times the Government-revenue in a revenue paying estate, *Rasik Behary* v. *Hriday*, 1922 (Pat) C.W.N. 162: I.L.R 1 Pat. 471: 66 I C 769.

A suit for possessino of *Math* properties on the allegation that the plaintiff is a *chela* of the deceased Mohant and that the defendant Mahant had taken a wife thereby incapacitated for continuing as a Mahant, is a suit for declaration with a consequential relief as the plaintiff before he obtains a decree for possesion, must have it decided in his favour that the defendant had vacated office of Mahant and secondly that the plaintiff had succeeded to that office and a finding and a declaration to that effect is necessary, *Ram Bhusan* v *Bachu Rai*, (1934) 152 I.C. 1003: 1934 A I R. 641 (Pat).

Against licensee—Where the plaintiff sued for a declaration of his title and possession of the land and for removing the defendant (a licensee) and for a permanent injunction on the defendant, restraining him from coming upon the land after removing him therefrom, the plaintiff valued his suit at Rs 100 for ejectment and injunction and claimed Rs 46 as damages and paid court-fees *ad valorem* on that valuation, and the defendant objected that the suit should be valued at Rs 2,200—the value of the land, *held* that as the defendant is a mere licensee he has no interest in the land The valuation made is therefore sufficient, *Basiram* v *Ganesh*, 24 C W N clxvii (notes)

Where the plaintiff sued on a stamp of Rupees ten for a declaration of his title to land worth more than Rs 19,000 in the possession of the defendant, that the demarcation by the Revenue Officer is erroneous and for a declaration of his title thereto, the Court was satisfied that the plaintiff, Zamindar, wanted to get possession of the land by way of declaration and thereby deprived the adversary of the benefit of the pleading open to him in an ejectment suit, held that the plaintiff ought to pay *ad valorem* court-fees on the plaint, but having regard to the circumstances of the case, refused to allow the plaintiff to put in additional stamp, *Chokalinga Peshana* v *Achiyar*, 1 Mad. 40

Declaration of title as an adopted son and possession—Where a challenge is thrown on the plaintiff's title as the adopted son of a certain person and the plaintiff comes into Court in order to meet that challenge and claims a declaration of his title as an adopted son, and also seeks to recover possession of his adoptive father's property, the suit falls under sec. 7 (iv) (c) of the Court Fees Act and not under sec 7 (v) of that section, *Ugra Mohan* v *Lachmi Prosad*, 5 Pat L J. 341: 56 Ind Cas 422 See also the P C case of *Rachappa Desai* v.

Shiddappa, 24 C.W.N. 33: 43 Bom. 507: 29 C.L.J. 452, where *ad valorem* court-fee was paid on the property sought to be recovered but only Rupees ten was paid in respect of properties in the custody of Collector as in a suit for mere declaration because the property in the custody of the Collector should be deemed to be in the possesion of the successful party.

A suit for a declaration that an adoption is valid affects title to property and if the value is over Rs. 400 *ad valorem* court-fees are to be paid under C P Civil Circular II-8, *Amdu and others* v *Pissi*, 120 I C 408 See other cases under Sch. II, Art, 17, Cl (v)

Possession after declaration that a decree is not binding.—A suit for a declaration that certain decree was of no legal effect against plaintiff and for possession of the portion sold in execution, is a suit for declaration with possession as a consequential relief Therefore, court-fee is payable only for the relief regarding possession and no separate *ad valorem* court-fee is payable on the amount of the decree in respect of which the declaration is sought In such a case the question is whether one relief is to be taken as consequential to the other or as independent of each other The Madras High Court said: "The learned District Judge was clearly mistaken in his statement that sec 7 (iv) (c) of the Court Fees Act regulated the valuation of the whole suit, since part of the relief claimed was for possession and it had to be valued in accordance with sec 7 (v) notwithstanding that a declaration also was asked for That is recognised in one of the cases cited by the learned District Judge, *Chinnammal* v *Madrasa Rowther*, 27 Mad 480 14 M L.J. 343" *Raja Gopal* v *Vijoya Raghava*, 38 Mad 1184 25 Ind Cas. 683: 12 L W 824 See also *Shama Prosad* v *Sheoperson*, 5 Pat.L.J. 394 2 Pat L W 173: 41 I C 95 where it was held that the case comes under sec 7 (iv) (c) and the plaintiff must put a reasonable valuation and pay court-fee *ad valorem* on that valuation See also *Iswari Dial* v. *Kishen Das*, 1 A W N 5 But where in order to succeed in a suit for possession, it is necessary for the plaintiff to obtain a declaration that a document or decree is void or inoperative, the court-fee to be paid must be calculated on the actual value of the property, *Lagan Burt* v. *Khakhan*, 43 Ind Cas. 962 (Patna): 3 Pat.L.J. 92.

The test is whether the plaintiff includes amongst the reliefs claimed not merely a request for possession, but also as paving the way of such request, the relief of declaration of title, *Tularam* v. *Dwarka Das and others*, 50 All. 510: 26 A L.J. 316: 115 I C. 655: 1928 A I.R. 248 (All.).

In a suit for declaration of title and possession. "if the principal relief claimed is one for possession another relief for declaration is merely ancillary to it, in that case it is enough

to pay the court-fee on the relief for possession. On the other hand, if the principal relief is for declaration and the plaintiff's right to possession depends on his being entitled to the declaration, then the relief for possession must be regarded as a consequential relief and the court-fee would be payable according to the amount at which the relief sought is valued in the plaint or the memorandum of appeal" * * * * In the present case it is necessary for the plaintiffs to get a declaration about the mortgage decrees against his father, of the said decrees not being binding on him before he could be entitled to a decree for possesion, therefore, the relief for possession is a consequential relief, *Deoraj* v *Kunj Behari and others,* (1929) 5 Luck 474 124 I C 420 1930 A I R 104 (Oudh)

Suit for possession—A suit for possession without any prayer for setting aside a decree, may be stamped as in a simple suit for possession, *Babuappa* v *Ramchandra,* 1929 A I.R. 276 (Nag)

Reversioners—Sec 7 (iv) (c) does not apply to a suit by reversioners, *Ramakrishnayya* v *Peda Seshamma,* 41 L.W. 488: 1935 M W N 406: 1935 A.I R 436 (M).

Patni Sale.—A suit for reversal of a sale held under Patni Regulation (Reg VIII of 1819) under section 14 of that Regulation, is not a suit for pure declaration within the meaning of Sch II, Art 17, clause (iii) of the Court Fees Act, but is a suit for a declaration with a consequential relief, as under the provisions of sections 14 and 15 of the Regulation VIII of 1819, a suit for reversal of a putni sale is not a suit for a declaratory relief within the meaning of Art. 17 of Sch. II of the Court Fees Act, *Tara Prosonno Chongdar* v. *Nrisingha Moorari Pal and others,* 51 Cal. 216: 28 C.W.N. 683: 39 C L J. 212: 1924 A I R 731 (Cal.). See also *Bidhu Bhusan Bakshi* v. *Kala Chand Roy,* 1927 A.I.R. 775 (Cal.): 106 I.C. 335: 31 C.W.N. 1045

Valuation—Where a *putni* was sold for arrears of rent under Reg VIII of 1819, the plaintiff, in suing to set aside the sale for his own share, is to value the suit on the value of the entire property to be sold, *Unnoda Pershad Ray and others* v. *Messrs Erskine and Co,* 21 W.R. 68: 12 B L.R. 370; *Suresh Chandra Mukhopadhya* v. *Akkori Singh,* 20 Cal. 746 (753).

Police Act.—A plaint in a suit against impositions under the general Police Act and injunction restraining the realization of those impositions, is to be valued at which the injury to the plaintiff is assessed when the amounts of imposition are not yet realized and *ad valorem* court-fees paid on that valuation—*Girish Chandra Sanyal* v. *The Secretary of State for India in Council,* 105 I.C 80: 1928 A I.R. 55 (Cal).

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Restitution of Property—Where the plaintiff sued to recover mortgage money on the basis of a mortgage bond executed by the mother of defendant No 1, a Mahomedan, and on behalf of her two minor daughters, defendants Nos 2 and 3, but not as their guardian and wanted to make them liable but during the trial it was found that the loan benefited the defendants Nos 2 and 3, held that the minors are to make restitution of the money so far as they are concerned, and the appeal cannot be filed on a stamp of Rupees ten but *ad valorem* court-fees should be paid on the amount due on the shares of the minors. *Moyna* v *Banku*, 6 C W N. 667 Orders of restitution under section 114, C P C (Act V of 1908) come under section 47 (1), C P C and a court-fee of Rupees two only is payable on the memorandum of appeal to the High Court under Art 11, Sch. II, *Madan Mohan* v *Nagendra*, 21 C W N. 544, *Gangadhar* v *Lachman*, 11 C L J 541. This is also the view taken by the Patna High Court in M. A 142 of 1917 (unreported) See also *other cases under Art. 11, Sch II of this Act, infra, for other High Courts*

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A declaration may have to be prayed for various reasons and not merely for establishment of the fact of marriage. In *Gatharam* v *Moohita Kochin*, (1875) 23 W R 179 the Calcutta High Court held. "Whenever the law recognizes that the relation of husband and wife exists, it also recognizes that the husband is bound to live with the wife and the wife with the husband, and if the obligation is denied by either of the parties to the marriage, the Courts ought certainly to declare the right to exist. If also any person should interfere and prevent the wife from returning to her husband, or the husband to the wife, there is no difficulty in punishing this invasion of the rights of others and even compensating the injured party to some extent." The real difficulty arises when one comes to deal with a refusal to perform the conjugal duties by one of the parties to the marriage after the existence of the matrimonial relation has been ascertained See also *Gajendra Nath Saha Chowdhury* v *Sm Sulochana Chowdhurani*, 39 C W.N. 131: 60 C L J. 203 1935 A.I.R. 338 (Cal) which was a case of refusal of conjugal right owing to alleged cruelty by the husband

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that the sale was invalid by reason of fraud and irregu'..; that the necessary processes were issued and served irregula', and that in consequence of the said irregularities the estate was sold for a very low price; (ii) he asked for an injunction to restrain the defendant from taking possession; (iii) that the possession of the plaintiff be confirmed and if it be found that he has lost possession then the same be given to him, held, that the plaintiff should pay *ad valorem* court-fees on the value of the estate *Dhakeswar* v *Jiva*, 3 Pat.L.J. 448: 46 Ind. Cas. 385, but it was held in *In the matter of F. A. 128 of 1922* that such a suit is one for possession only Walmsley and B. B. Ghose, JJ decided on 15th Dec 1924 (unreported).

Suits relating to Trust.—As for public Trusts, See under Art. 17 (vi) second schedule

Shebaitship—Suit for a declaration that the plaintiff is the sole *Shebait* and for an injunction to restrain the defendant from interfering with his possession of the endowed property, and also for a declaration that the defendant is not the *Shebait* of the idol, falls within section 7, paragraph (iv), clause (c) of the Court Fees Act and the plaint is to be stamped with *ad valorem* court-fees calculated on the valuation of the property, *Raj Krishna* v *Bepin Behary*, 40 Cal. 245: 17 C.W.N. 591 16 C L J 194. 17 Ind Cas 162. Where the plaintiff sued for declaration that he is the sole *Shebait* of the endowed properties and that the defendants who had been constituted joint *Shebaits* under the compromise decree had not been validly appointed and that the compromise decree is inoperative and also asked injunction on the defendants to restrain them from interfering with his management the plaint is to be stamped with a court-fee *ad valorem* on the valuation made by the plaintiff, *Mohendra* v *Dinabandhu*, 19 C L J 15 21 Ind. Cas. 771. See also *The Official Trustee of Bengal* v *Gobardhan Guchait*, 33 C.W.N. 231: 118 I C 357 But where the plaintiff is out of possession a prayer for an injunction is insufficient, he must also ask for possession as an injunction is a discretionary relief and cannot be claimed by a plaintiff when he does not seek possession against defendants in possession, *Rathnasabapathi* v *Ramasami* 33 Mad. 452 See also *V Ramadas* v. *K. Hanumantha*, 36 Mad 364: 21 M L J 952 12 I C 449. Where the plaintiff sued to obtain a declaration that he is entitled to have the exclusive management of certain *devasthan* moveable and immoveable properties attached to an idol, *held* that the real object being to obtain an injunction also and as injunction is a consequential relief the case comes under section 7 (iv) (c) of the Court Fees Act and *ad valorem* court-fee is payable calculated on the value of the relief claimed, *Raghunath* v. *Gangadhar*, 10 Bom 60 See also *Manni Lal* v. *Radhey Gopal*, 23 A.L.J. 344: 47 All 301

1925 A.I.R. 602 (All) : 87 I.C. 650 where the prayers were that (1) it may be held that the defendant has no power to supervise and manage the properties of the plaintiffs 1 and 2 and it may be declared that the plaintiff No 3 is the lawful manager of the plaintiffs 1 and 2, (2) that the defendant be restrained by means of a perpetual injunction from supervising and managing the properties of plaintiffs 1 and 2 and from entering on the properties of the plaintiffs

A suit by a *Shebait to* set aside leases of certain debutter properties and for possession comes under sec 7 (iv) (c) of the Court Fees Act and the subject-matter of the suit is not the properties irrespective of the lease but was the leaseholds created by the documents, *Sailendra Nath Kundu etc* v *Surendra Nath Sarkar*, (1934) 39 C W N 248 60 C L J 469: 62 Cal 417

Valuation—See *Hridoy Kishore Nandy* v *Hari Bhusan De*, 58 C L J 171 1934 A I R 250 (Cal) 149 I C 1044, where it was held that *ad valorem* court-fees on the valuation of the debutter properties are not chargeable as the object of the suit was to exclude the defendant from the management of the debutter property and interference of the same The valuation in this case was held to be reasonable.

Removal of Trustee—Where the suit is for the removal of M as manager and for appointment of the plaintiff as manager of the property, held that the plaintiff was not entitled to sue for removal of M without praying for his ejectment from the property, *Sanachella* v *Manika*, 8 Mad 516 See also *Chokalingapeshana* v *Achiyar*, 1 Mad 40 Where the plaintiffs ask for a declaration that a mutwali had been guilty of misfeasance and asked to have her removed from the *mutwalliship* and themselves appointed in her place whereby they would have been entitled to a share in the produce of trust money, the High Court held, "The plaintiffs ask for a distinct and important consequential relief, they ask not only that the defendants may be declared to have wasted the endowment, and thereby to have destroyed the trust, but also that she may be turned out of her *mutwalliship* and they, the plaintiffs, be appointed in her place. The plaintiffs say that what they claim does not admit of being properly estimated at a money value, but this is not so. Under the *towliatnama*, the *mutwallis* were to receive six-twenty-eighths of the produce of the estate, a very considerable sum and the plaintiffs' claim to this share as an appurtenance to the office of *mutwalli* was easily to be estimated in money. I am of opinion that the plaint ought to have been engrossed on a stamp of proper value," *Delroos Banoo Begum* v. *Nawab Syed Ashgar Ali*, 23 W R 453: 15 B.L.R. 167 (187) P.C. Where although no emoluments are attached to the office of the trustee still if the suit be for the purpose of controlling the endowment

and also for removal of the trustee from the management for the misconduct of the trustee, the valuation for the purpose of court-fees was also regarded as valuation for the purpose of jurisdiction, *Omrao Mirza* v *Jones*, 10 Cal. 599: 12 C L R. 148.

A suit instituted for the purpose (1) that the present Mohant may be removed and a new Mohant appointed in his place and (2) that along with the Mohant so appointed a Committee may be formed to fulfil the object of the Trust, (3) the property of the trust may be made over to the new Mohant and the newly appointed committee and list of the said property be prepared and a scheme be settled The defendant denied the existence of the trust and claimed title in himself, *held* that the suit was one under sec 92 of the Code of Civil Procedure and Article 17, clause (vi) of the Second Schedule to the Court Fees Act applies to such a case The suit is not one for a declaration with a consequential relief, therefore, s 7 (iv) (c) of the Court Fees Act and the cases decided with regard to that provision do not apply, *Beli Ram and others* v *Ishar Das*, I L R. 8 Lahore 730: 1928 A I R 113 (Lahore)

For other cases under sec 92, C P C See cases under Sch II, Art 17 (vi), *infra*

Suit to set aside Deeds—See *Mahomed Masik* v. *Malkai M U Badshah Mehal Saheba*, 10 Cal 380, where the plaintiff sued to set aside a deed of endowment executed by her and to recover rupees 2,50,000 handed over by her to defendant No. 1. The suit was valued at Rs 2,50,000 and court-fees *ad valorem* on that amount paid The suit was decreed and the defendant appealed but stamped the memorandum of appeal with a court-fee of Rs 10 only. The High Court held that "the defendant may not have any personal interest at all yet the subject-matter of the appeal may be as valuable as the subject-matter of the suit," and ordered that the memorandum of appeal should be stamped with court-fees *ad valorem* on Rs 2,50,000

Valuation.—A suit for declaration and injunction in respect of *private debutter* property, is a suit for a declaration with consequential relief and therefore such suit falls within sec 7 (iv) (c) of the Court Fees Act and court-fees *ad valorem* on the value made by the plaintiff are payable (16 C L J. 194). The valuation of the relief sought must be reasonable (19 C L J. 15) This will also be the result where any other consequential relief is claimed, as in all such cases the suit falls under sec. 7 (iv) (c) of the Court Fees Act.

This will also be the case where the trustee is sought to be removed.

Where emoluments are attached to the office of the trustee, the prayer is capable of valuation and court-fees *ad valorem* on the valuation are payable (23 W R 453 P C); but if no emoluments are attached to the office of a trustee and if the suit be for the purpose of controlling the endowment and also for removal of the trustee, court-fees *ad valorem* on the valuation are payable (10 Cal. 599) In a suit for declaration that the plaintiff is entitled to receive a share in the *charao* offerings to Baidyanathji from the successor in office of the defendant and for arrears of the same, the plaint is to be stamped as in a suit for declaration plus *ad valorem* fees on the amount claimed as arrears (23 Cal 645)

As regards ancient temples devoted absolutely and in perpetuity to religious purposes, the subject-matter of the suit or appeal, is incapable of valuation as it is a subject-matter for which there is no market (46 Mad 782)

When the trust property is in the hands of a receiver or is in the possession of Court of Wards, the principle enunciated in *Shiddappa* v *Rachappa*, 36 Bom 628 affirmed by P.C., in 43 Bom 507 will apply

But the case will be different if the suit falls under sec 92 of the Code of Civil Procedure; then the court-fees payable will be under Art 17, cl (vi) of the Second Schedule of the Court Fees Act as such cases are incapable of valuation for the purpose of court-fees The valuation for jurisdiction will be the valuation made by the plaintiff In suits of this class no court-fees other than the fixed fees are payable even if the prayer be for removal of the trustee or for an injunction or any other consequential relief

A claim to remove a *Karnavan* from management and appoint in his place the plaintiff, is incapable of valuation and it is erroneous to value such a claim as one for the recovery of property (4 Mad. 146 and 314).

A suit for a declaration that the plaintiff is the *Bara Thakur* of a temple and for a [illegible] party to prevent them from [illegible] aintiff, should be valued for th [illegible] rt-fees on the value of the temple property or such portion of it from which the plaintiff had been dispossessed, *Manick Chandra Sarn* v. *Dambhasudhar Sarma and others*, 1930 A.I.R. 41 (Cal. 1930 I.R. 715 (Cal.): 126 I C 267.

Suits arising out of proceedings under the Land Regi tration Act (B. C. Act VII of 1876).—See Art. 17, clause (ii Sch II of the Act. The weight to be given to the registratic of the name of the plaintiff in the proceedings under the Lar Registration Act depends on the facts of each case, *Loke Na*

and also for removal of the trustee from the management for the misconduct of the trustee, the valuation for the purpose of court-fees was also regarded as valuation for the purpose of jurisdiction, *Omrao Mirza* v *Jones*, 10 Cal. 599: 12 C L.R. 148.

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Valuation.—A suit for declaration and injunction in respect of *private debutter* property, is a suit for a declaration with consequential relief and therefore such suit falls within sec 7 (iv) (c) of the Court Fees Act and court-fees *ad valorem* on the value made by the plaintiff are payable (16 C L J. 194). The valuation of the relief sought must be reasonable (19 C.L J. 15) This will also be the result where any other consequential relief is claimed, as in all such cases the suit falls under sec. 7 (iv) (c) of the Court Fees Act.

This will also be the case where the trustee is sought to be removed.

259. Where the plaintiff sued the defendant, a co-widow, for declaration that she is entitled to share equally with the co-widow, the properties left by her husband, *held* that the plaintiff was bound to sue for a specific share and she must pay *ad valorem* court-fee on her share, *Musst Ganesha* v *Musst Darobati*, 20 P R 1975

A suit for a declaration that the plaintiff was the owner of certain *Toda Giras Hak* annuity of a certain amount received by a certain lady as heir and as such entitled to recover the same, comes within section 7 (iv) (c) and court-fee payable is *ad valorem* on the valuation by the plaintiff, *Bhimsangji Chhatrasangji* v *Dowlatsangji Hamersangji*, 27 Bom L R 247. 1925 A.I.R. 282 (Bom): 87 I.C 801

Succession Act.—There is nothing in sec 387 of the Indian Succession Act which prescribes the nature of a suit brought to contest an order passed under it It is in no sense analogous to one brought under Order 21, Rule 63, C. P. C, and where the action involves consequential relief, court-fee has to be paid on the value of the subject-matter, *Ghulam Mohammad* v. *Hazrat Ghani and others*, 1933 A.I.R. 13 (Peshawar) · 141 I C. 221.

Title.—*Assertion of hostile title*—An unfounded assertion of a proprietory right in a Revenue Court which had no juris-""ction to determine the proprietory right in the land, cannot 'apse of six or twelve years convert what was an occupancy or title into that of an under proprietor, *Raja Mohammad* .. *Ali Khan* v. *Mohan Singh*, 28 C W N. 840 · 39 C L J. See *contra*—*Hurnarayan* v. *Suresh*, 68 Ind. Cas 203

allenge to Title.—Where upon a challenge being thrown te of an adopted son, he came to Court with a claim ion of his title and recovery of possession of pro- by adoptive father, the suit came under section 7 the Court Fees Act, *Ugra Mohan* v. *Lachmi*, 5 Ind Cas 422.

affecting title—A suit for a declaration that 1 had no title thereto and that she had no the same, and that the sale deed executed by oes not affect the title of the plaintiff and No 2 has not any right under the deed, is with a consequential relief as the prayers it are necessary and separate unless the one of them, *Khirichand Mahton* v. 5 Patna 493: 8 P.L T. 296: 98 I.C. 432:

P *on establishment of title.*—See under

v *Dhakeswar*, 21 C L J. 253. Where the plaintiff sued, after an adverse order by the Collector, for declaration of his title to the land, alleging, that he is in possession, it was held that he must also seek for possession, otherwise the suit is barred as he does not seek further relief as required by section 42 of the Specific Relief Act, *Raj Narayan* v *Shyamnanda*, 26 Cal. 845 But the above decision was upset on review and it was found on remand that the plaintiff is in possession and the Calcutta High Court held when the case came back again after remand that if a party be in possession by receipt of rent from tenants then "he must be deemed to be in constructive possession till the tenants refuse to pay him rent Section 89 of the Land Registration Act, clause (a) contemplates a regular suit by the defeated party, either for possession or for a regular suit by the defeated party, either for possession or for declaration of title to immoveable property. Therefore, the plaintiff can sue only for declaration of his title without asking for any further relief, *Shyamanand* v *Raj Narayan*, 4 C L J 568 (572): 11 C W N 186 (189)

The effect of the order under section 59 of the Land Registration Act is stated in section 62 of that Act to be that of "settling the actual possession," that is to say, "of determining that the plaintiff in the present case was not in possession of the property which forms the subject of the present suit." Therefore, a suit for a mere declaration is barred by section 42 of the Specific Relief Act, *Ram* v *Janki*, 12 C L R. 136. In the following cases it was held that a prayer for possession was necessary, *Omurunnessa* v *Dilwar*, 10 Cal 380; *Fakir Chand* v *Anunda Chunder*, 14 Cal 586

Effect of mutation of name—Mutation of name by itself does not create any proprietory rights, *Chokhey Singh* v *Jote Singh*, L.R 36 I A. 38· 31 All 73: 6 A L J 100 11 Bom.L R. 69: 13 C.W N 274: 9 C L J 151: 29 M L.J 123: 12 O C. 288: 1 I C. 166 P.C

Where the plaintiff has got his name registered under the Land Registration Act, the weight to be given depends on the facts of each case, *Loke Nath* v *Dhakeswar*, 21 C.L J. 253.

Succession as Heir.—Where the plaintiff sued to establish his right as heir of her deceased son and to set aside a certificate under Act XXVII of 1860 granted jointly to her as well as to the defendant, with a view to being permitted to draw interest on Government Promissory notes belongiong to the estate of the deceased, *held* that as consequential relief was to follow the declaratory decree sought, the stamp of Rupees 10 prescribed by Art. 17 , clause (iii) of Sch II of the Court Fees Act, is not sufficient for the plaintiff, *Mokhoda* v. *Nahin Chandra*, 16 W.R.

259 Where the plaintiff sued the defendant, a co-widow, for declaration that she is entitled to share equally with the co-widow, the properties left by her husband, *held* that the plaintiff was bound to sue for a specific share and she must pay *ad valorem* court-fee on her share, *Musst Ganesha* v *Musst Darobati*, 20 P R 1975

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Title.—*Assertion of hostile title*—An unfounded assertion of a proprietory right in a Revenue Court which had no jurisdiction to determine the proprietory right in the land, cannot by lapse of six or twelve years convert what was an occupancy or tenant title into that of an under proprietor, *Raja Mohammad Mumtaz Ali Khan* v *Mohan Singh*, 28 C.W N. 840: 39 C.L.J. 295 P C See *contra*—*Hurnarayan* v *Suresh*, 68 Ind. Cas. 203.

Challenge to Title—Where upon a challenge being thrown on the title of an adopted son, he came to Court with a claim for declaration of his title and recovery of possession of properties left by adoptive father, the suit came under section 7 (iv) (c) of the Court Fees Act, *Ugra Mohan* v. *Lachmi*, 5 Pat L J 39: 50 Ind Cas 422

Instruments affecting title—A suit for a declaration that the defendant No 1 had no title thereto and that she had no right to transfer the same, and that the sale deed executed by defendant No 1 does not affect the title of the plaintiff and that the defendant No 2 has not any right under the deed, is a suit for a declaration with a consequential relief as the prayers are not co-extensive but are necessary and separate unless the plaintiff elects to delete one of them, *Khirichand Mahton* v. *Musst. Meghni*, I L R. 5 Patna 493: 8 P.L.T. 296: 98 I C. 432: 1926 A I R. 453 (Patna).

Partition and possession on establishment of title—See under

heading *"Partition and possession on establisment of title," supra.*

Wills.—The plaint in a suit to set aside a will as a forged document and for confirmation of possession, is to be stamped with court-fees *ad valorem* according to the valuation of the subject-matter, *Jay Narayan* v *Girish Chandra*, 22 W.R 438: 15 B L R 172 See also *Dinabandhu* v *Rajmohini*, 16 W.R 213: 8 B L R App 32 Where the plaintiff simply sued for a declaration that the will by the deceased is genuine and that a certificate under Act XXVII of 1860 was erroneously granted, it was held, a court-fee of Rupees 10 is sufficient as no consequential relief was necessary, *Gangamoni* v *Gopal Chandra*, 19 W R 214. During the lifetime of a testator a simple declaration as to any will by the testator is sufficient, but after the death of the testator the will becomes operative and the person seeking to avoid it must sue for its cancellation, *Hukam Singh* v *Gyan Devi*, 36 Ind Cas 95: 87 P R 1916· 13 P.L.R. 1917: 127 P W R 1916 See also *Hakim* v *Musst Mahtab*, 109 P.R. 1893, which was a case of a suit by a reversioner.

A bequest by A to his wife J of his property for her maintenance was followed by another bequest empowering her to alienate the property J made a gift of the property to one of their sons who sold it away A grandson filed a suit for a declaration during the lifetime of J. that the gift and the subsequent sale are invalid It was held that on the death of A. the will has lost its ambulatory character and that the plaintiff is bound to ask for the cancellation of the will and pay *ad valorem* court-fees, *Charan Das* v *Musst Jamna Debi and others*, 1929 A I R 811 (Lah): 10 Lah 403: 10 L.L J 562: 30 P.L R. 672: 112 I.C. 48.

Forged Will—A suit for a declaration that a will set up by the defendant is a forged document and that the plaintiff is the legal heir of the deceased and for an injunction restraining the defendant from interfering with the property of the deceased, is a suit for a declaration with a consequential relief If the valuation is erroneous then the party may be allowed to amend, *Bura Mall v. Tulsi Ram, 107 I.C. 609 9 Lah. 366 9 L.L J. 579:* 29 Punj.L R. 27: 1927 A.I.R. 890 (Lah.).

When the prayers in the plaint were that the will may be declared to be a forgery; secondly, that the will may be cancelled, and thirdly, that the order of the sub-registrar registering the will may be cancelled, the suit was held to be for a declaration only as the 2nd and 3rd prayers were superfluous inasmuch as under sec. 39 of the Specific Relief Act, the Court is bound to perform those acts and therefore the suit does not come under sec. 7 (iv) (c) as there the relief asked for is not a

declaratory decree plus consequential relief but comes under Art. 17-A of the Second Schedule as amended in Madras, *Katt[illegible]* *Pillai and an*[illegible] 56 M L J 39[illegible] 396 (Mad): 119 I.C 35

Valuation.—Where a plaintiff sues for a declaratory decree and asks for a consequential relief, and puts his own valuation upon that consequential relief, then for the purpose of court-fees and also for the purposes of jurisdiction, it is the value that the plaintiff puts upon the plaint that determines both, *Sunderabai v Collector of Belgaum*, L R 46 I A 15, 43 Bom 376 23 C W N 753 1919 M W N 254: 21 Bom L R 1148: 52 I C 897 P C (but in this case the question about court-fees was not exactly before the Judicial Committee)

In cases falling under section 7 (iv) (c) of the Court Fees Act, the plaintiff must value in his plaint the relief sought and the plaint must be stamped according to such valuation, *Sit Soe and others v Ma Thin*, 1924 A I R 378 (R)

Where a plaintiff seeks to obtain a declaratory decree with consequentlal relief [sec 7 (iv) (c) or to obtain an injunction cl (d)] the suit must be valued according to the amount for which the relief sought is valued in the plaint, *Rajendra Baksh Singh v Musst Bahu Ram*, 107 I C. 330: 1928 A I R 260 (Oudh)

The plaintiff is entitled to put his own valuation in a suit for a declaration with a consequential relief The valuation of the suit would be the valuation put by the plaintiff under the provisions of the Suits Valuation Act, *The Official Trustee of Bengal v Gobardhan Guchait*, (1928) 33 C W N. 231: 118 I.C. 357

In the absence of rules under sec 9 of the Suits Valuation Act, the Court not having any standard of valuation to refer to, would be unable to revise the valuation by the plaintiff, *The Narayanganj Central Co-operative Sale and Supply Society Ltd v. Mafizuddin*, 61 Cal. 796: 38 C W.N 589: 59 C.L.J. 233: 149 I.C. 3: 1934 A I R 448 (Cal) F.B

If a plaintiff values his suit for the purpose of jurisdiction at a certain amount, he cannot put a different valuation when it is found that the suit falls under sec. 7 (iv) (c) of the Court Fees Act, *Srikishen Das v. Satnarain*, 32 P.L R. 729: 135 I C. 499: 1932 A I.R 132 (Lah.).

In a suit for declaration with consequential relief, the plaintiff may put his own valuation, but the defendant is entitled to object to the valuation and if such objection is taken then the Court is to enter into the question as to the correctness of the

valuation, *Kirtyanand Singh* v. *Dinu Manjhi*, 149 I.C. 109: 1934 A.I.R 234 (Patna).

It is not necessary for a plaintiff in a suit falling under sec 7, paragraph (iv) of the Court Fees Act to fix any value for the purposes of jurisdiction, as under sec. 8 of the Suits Valuation Act the value determinable for the computation of court-fees governs the value for the purposes of jurisdiction, *Gobindabin Krishna Sathi* v. *Hanmaya Lingaya Fulmali*, (1921) 45 Bom 567, *Maung Nyi Maung* v *The Mandalay Municipal Committee*, (1934) 12 Rang. 335 (339): 1934 A.I.R 268 (Rang)

Note.—It should be borne in mind that the provisions of sec. 12 of the Court Fees Act, which is in this chapter allows the Court to revise the valuation

The valuation can also be revised under rules 10 and 11 of Or 7 of the Code of Civil Procedure.

Sec 8 of the Suits Valuation Act requires that the value as determinable for the computation of court-fees and the value for the purposes of jurisdiction shall be the same

Sec. 7 (iv) (c), Proviso (Madras)—The proviso merely introduces a downward valuation below which reliefs sought in respect of immoveable property consequential on declaratory decrees shall not be valued, *Venkataswa Rao* v *Venkatanarasimha and others*, 63 M L J 764: 36 L W 225: 1932 M W N 992: 139 I.C 317 1932 A.I R 605 (Mad): 1932 I R 643 (Mad): 56 Mad. 212 (221).

PARAGRAPH (iv) (d)—Injunction.

This clause applies only to suits for perpetual and mandatory injunction As regards orders for injunction under Order 39, C. P C., an appeal lies as an appeal from order and consequently *ad valorem* court-fee is not necessary

See also under "Declaration and injunction", *supra*, under sec. 7 (iv) (c).

In *Gangadhar Misra* v. *Rani Debendrabala*, I L R. 5 Patna 211: 94 I.C 22: 1926 A I.R 249 (Patna) the Patna High Court held that a prayer for an *ad interim* injunction in a suit for declaration is a prayer for a consequential relief.

Stay of Batwara Proceedings.—Suit by an allottee under a private partition to stay subsequent partition proceedings under Bengal Regulation XIX of 1814 and to have his possession confirmed, should be considered as one for a declaratory decree or something in the nature of an injunction and therefore the plaint should not be stamped according to the value of the entire estate, *Joynath* v *Lal Bahadoor*, 8 Cal 126: 10 C.L.R. 146

Suits under sec. 149 of the Bengal Tenancy Act.—The institution fee in a suit under section 149 (3) of the Bengal Tenancy Act is *ad valorem* on the rent deposited, *Trailokya Mohini Dassi* v. *Kali Prasanna Ghose*, 11 C W N 380 (382). But it was said in that case that it could hardly have been the intention of the Legislature that a simple suit such as sec. 149, cl. (3) of the Bengal Tenancy Act appears to contemplate, should develop into a suit involving intricate questions of title. A suit contemplated by this section is a suit with reference to the money deposited in Court and for an injunction restraining the paying out of the money It does not contemplate a suit for the establishment of the relation of landlord and tenant, *Haranath Banerji* v *Ananta Dasi*, 9 C W N 492 A suit under this sub-section is in the nature of an interpleader suit, the question of title and possesssion may be incidentally gone into, *Gurudas Rakshit* v *Kumud Bandhu Ray*, 7 C L J 40 (notes)

"A suit under section 149 (3) of the Bengal Tenancy Act is not a title suit and need not be stamped as such It is in the nature of a suit for an injunction under the Specific Relief Act or else a declaratory suit," *Jagadamba Devi* v *Pratap Ghose*, 14 Cal 537 (539) See also the case of *Rubiunnessa* v *Gooljan Bibee*, 17 Cal 829, where it was also said that the object of section 149 is to prevent tenants being harassed in disputes between rival claimants to the land

In a suit under section 149 of the Bengal Tenancy Act unless the plaintiff establishes his title and possession he is not entitled to the order restraining payment out of the money under clause (3), *Kazi Mahomed Mazhar* v *Sheikh Kadir*, 11 C W N 128 (note)

Injunctions.—Where the plaintiff in a suit under section 539, C P C (Act XIV of 1882) asked for possession and also for an injunction which he valued separately at Rs 100, *held* that the plaintiff is to pay court-fees *ad valorem* on that valuation, *Thakuri* v *Brahma Narain*, 19 All 60

Mandatory Injunctions—Mandatory injunction to demolish a house must be valued separately and *ad valorem* court-fees are payable thereon, *Jogal Kishore* v *Tale Singh*, 4 All 329

Account and Injunction—A suit for a declaration that the plaintiff is entitled to require the defendant to account to him and to permit him to inspect the account book, and also for a positive order in the nature of a mandatory injunction for the protection of defendant's books and property in their hands, should be considered as a suit to obtain a declaratory order where consequential relief is prayed and also a suit to obtain an injunction, *Manohar Ganesh* v *Bawa Ram*, 2 Bom 219; *Raghunath Ganesh* v *Gangadhar*, 10 Bom 60.

Declaration and injunction by reversioner—In suits by a reversioner against Hindu widow in possession, for a declaration and injunction, the court-fees payable must be computed according to the valuation made in the plaint, *Kandhaiya Ojha* v *Musst Jagrani Kuar*, 46 All 419: 79 I C. 358. 22 All.L.J 349: 1924 A I R 597 (All).

Injunction against Municipality—A suit for an injunction restraining a Municipal Committee from demolishing a thara not constructed in accordance with sanction falls within sec. 7 (iv) (d) of the Court Fees Act and the plaintiff is entitled to value the relief at his own valuation and under sec 8 of the Suits Valuation Act, the valuation for court-fees and for jurisdiction should be the same, *Dongarsi Das* v *The Municipal Committee, Fazilka*, 116 I.C 908: 1929 A I R 566 (Lah).

Where the plaintiff alleging herself to be in possession along with others of the piece of land in suit sued the Municipality and the transferee from the Municipality, praying for a declaration of her right to use the same and for a further declaration that the Municipality is not entitled to use it in a manner detremental to her right of user and for an injunction on the Municipality and the transferee prohibiting them to use the land in such a manner, *held* that the valuation for injunction can be a nominal amount permissible under the Suits Valuation Act and the court-fee payable is *ad valorem* on such value plus Rs. 10 for each of the two declarations, *Musst Mulkunnissa* v. *Municipal Committee, Delhi*, 118 P L R 1904

Valuation of a suit for a permanent injunction restraining defendant from cutting timber in jungle and undergrowth and accounts—The valuation of suit is the value of the relief sought in the plaint, and the plaint is to stamped with court-fee calculated *ad valorem* on that valuation, *Rai Charan Pandey* v *Kunja Behary*, 46 Ind Cas 884; *Hari Sankar Dutta* v *Kali Kumar Patra*, 32 Cal 734: 9 C W.N. 690; *Gulab Singhji* v *Lakshman Singhji*, 18 Bom. 100.

Valuation.—The valuation should not be an arbitrary valuation, *Mohendra* v. *Dinabandhu*, 19 C.L J 15· 21 Ind Cas. 771; *Rajabala* v. *Radhika*, 40 C L J. 150: 1924 A I.R. (969) (C.) where it was held that value of the property involved is not necessarily the value for the purpose of ascertaining court-fees A suit for declaration of title regarding a piece of land and for an injunction restraining the defendant from interfering with the construction of a chabutra was valued for the purpose of jurisdiction at Rs. 1,100 for the land and at Rs 10 for the relief of injunction; held that under section 7, iv (d) of the Court Fees Act read with section 8 of the Suits Valuation Act, the plaintiff was bound to pay court-fee *ad valorem* on Rs. 1,100 for injunction, *Bachhan* v. *The Municipal Board of Mirzapore*,

48 All. 412: 23 A.L.J. 478: 94 I.C 951. 1926 A.I R 423 (All.).

The valuation of a suit for an injunction restraining the defendant from enforcing a money decree personally against the plaintiff, must be according to the amount expressed in the money decree The plaintiff cannot put an arbitrary value in such a suit, *Nadir Khan Abdullah Khan* v *Firm of the Cox's and King's Shipping Agency Ltd*, 25 S L R 15 130 I C 445. 1931 A.I R 15 (Sind)

Power of Court to increase valuation—A plaint was filed in a certain Court praying for an injunction, the relief sought being valued at Rs 50 On the objection of the defendant an issue was framed and the question was tried and it was held that the value was Rs 2,700 which exceeded the pecuniary jurisdiction of the Court The plaint was accordingly returned for presentation to the proper Court *Held*, that the Court had no jurisdiction to increase the value of the suit section 7, paragraph IV (d) of the Court Fees Act requires that, in a suit for an injunction, the plaintiff shall state the amount at which he values the relief sought, *Guruvaiamma* v *Venkata Krishnama Chetty*, 25 Mad 34, but see *Umatul Batul* v *Musst Nanji Koer*, 11 C W N 705 6 C L J 427, *Balwant Rao* v *Bhima Sankar*, 13 Bom 517

A suit for an injunction comes under section 7 iv (d) of the Court Fees Act and the court-fees payable are to be computed *according to the amount at which the plaintiff values the relief* sought, in the plaint, which value the plaintiff is entitled to fix himself In such a case it is wholly unnecessary for the plaintiff to fix any value for the purpose of jurisdiction as, by section 8 of the Suits Valuation Act, the value for the purpose of court-fees is also the value for the purpose of jurisdiction, *Gobind Krishna Sathe* v. *Hanmaya Lingaya Fulmani*, 45 Bom. 567: 22 Bom L R. 1450: 59 Ind Cas 777 See also *Shrimant Sunderbai* v. *Collector of Belgaum*, 43 Bom 376: 23 C W.N. 753 P.C.

There is no direct authority for the Court to interfere with the valuation *set up by the plaintiff who seeks relief under* sec 7, iv (c) *or* (d) of the Court Fees Act unless the Court can take advantage of sec 151, C P. C, *Rajendra Baksh Singh* v. *Musst Bahu Rani*, 107 I.C. 330: 1928 A I.R. 260 (Oudh).

The plaintiff in a suit for a declaration and injunction is entitled to put his own valuation on the relief claimed and to pay court-fees thereon, *Pannalal Lala* v. *Abdul Gani and others*, 34 C.W N 321: 127 I.C 665: 1930 A I.R 473 (Cal). See also In *re Kalipada Mookherjee*, 58 Cal. 281: 34 C.W.N. 870: 1930 A.I.R. 686 (Cal.).

The defendant in a suit for accounts can plead that [illegible] would be due to him on taking accounts and can [illegible] a decree in his favour for such amount as may be found [illegible] on enquiry It is not necessary in such cases for the [illegible] to pay court-fees on the written statement [illegible] not a set-off nor a cross claim A Court [illegible] to pass such a decree in his favour [illegible] holding that where a defendant nominally [illegible] which he pays court-fees and offers to pay [illegible] on such sum as may be found due [illegible] accounts, he must be deemed to have [illegible] the balance, *Wali Mahomed* v *Khoja Ismail* [illegible] 1933 A I R 247 (Sind): 150 I C 464

What are not suits for accounts.–[illegible] be a suit for accounts by the plaintiff [illegible] unless the defendant is under liability [illegible] to the plaintiff A suit for the recovery [illegible] money does not assume the character of [illegible] merely because in the determination of [illegible] versy accounts may have to be examined [illegible] v *Kali Dasi Dasi*, 21 C W N 784: 27 [illegible] See also *Hansraj* v *Ratni*, 27 All 200; [illegible] Mad 394, *Maroti* v *Balaji*, 4 N L R [illegible] *chariar* v *Srinivasa Thathachariar*, 50 Mad [illegible]

A suit by a commission agent to [illegible] taking a balance of accounts, is not a [illegible] within s 7, iv (f) of the Court Fees Act [illegible] it is necessary to examine the account [illegible] a suit for accounts and if the defendant [illegible] decree, *ad valorem* court-fees on the [illegible] paid The defendant appellant cannot [illegible] fees on the ground that he wants a [illegible] *Ranchhod* v. *Umedram Kalidas*, 52 Bom [illegible] 1284: 115 I C 391: 1928 A.I R 476 (Bom [illegible]

Accounts against a karta of a joint [illegible] court-fees payable on a plaint or a memo[illegible] a suit for partition and accounts again[illegible] family is leviable under Art. 17, vi of the [illegible] the Court Fees Act as ordinarily there can [illegible] against the *karta* as an agent on behalf [illegible] of the family, but only to disclose the pro[illegible] in his hands and that might necessitate lo[illegible] Therefore, a prayer for accounts does no[illegible] iv (f) of the Court Fees Act, *Jyoti*[illegible] *Lakshmeswar Prasad Chaudhury*, 8 Pat [illegible] 120 I.C. 770: 1930 A I R. 1 (Patna). [illegible] *Dubey and others* v. *Gobind Dubey*, 43 C[illegible]

(28): 33 I.C. 190 where the Calcutta High Court held that a *karta* is the accountable party. See also *Beni Madhab Sarkar* v. *Gobind Chandra Sarkar,* 22 C W N 669 where *ad valorem* court-fee on the approximate valuation was ordered to be levied

Accounts relating to trust properties.—*Suit for partition of offerings and accounts*—The plaintiffs, who are *pujaris,* brought a suit for partition of offerings in the temple and to have the accounts explained to them and for inspection of the strong room, in which the offerings are stored *Held,* that the suit is really one for accounts and *ad valorem* court-fees are payable, *Kalka Ram* v *Ram Saran,* 13 P.R 1901: 137 P L R 1901

Suit for removal of Mohant and accounts—Where the plaintiffs brought a suit for removal of trustees, and for accounts, in case it be found that the trustee has embezzled any money of the idol, the suit does not come under this clause, as the money will be due to the idol and there will be no relief sought by the plaintiff on this account, *Ramrup Das and others* v. *Mohunt Sitaram Das,* 14 C W N 932 12 C L J 211 7 Ind. Cas. 92; *Girdhari Lal* v *Ram Lal,* 21 All 200 See also under Art, 17, Clause 6 of the second Schedule of this Act under "Charitable and Religious Trusts"

Administration suit—For decree in Administration Suit see Order 20, Rule 13, C P C

Administration suit—An administration suit is in essence a suit for accounts and application of the estate of the debtor for satisfaction of the dues of all the creditors

An administration suit by a creditor is an action for an account within the meaning of section 7, iv (f) and the plaintiff is, therefore, entitled to put his own valuation on the relief claimed and that valuation would be valuation both for purposes of jurisdiction and for court-fees Court-fees need not be paid on a higher valuation than the amount claimed by the plaintiff, *Sashi Bhusan Bose* v *Maharaja Sir Manindra Chandra Nundy,* 24 C.L J. 448: 21 C.W.N. 1310: 44 Cal 890: 38 Ind Cas. 835. See also *Ma Ma* v. *Ma Hmon,* 4 L B.R. 279, *Chandramani* v. *Basdeo,* 4 Pat L.J. 57: 49 I.C. 442; *Satya Kumar Bannerjee* v. *Satya Kripal Banerjee,* 10 C L.J 503: 3 Ind Cas. 247.

The claim in a suit for accounts of the estate of a deceased and for its administration by the Court was valued at Rs 130 for the purpose of court-fees and at Rs 30,00,000 (thirty lakhs) for the purpose of jurisdiction, *held,* that having regard to the statements made in the plaint, the suit is an administration suit; and that it should be treated as a suit for accounts, the plaintiff being at liberty to value it at Rs. 130 or any other sum under

section 7, iv (f) of the Court Fees Act, *Khatija* v *Sheikh Adam Husenally*, 39 Bom 545: 17 Bom L R 574· 29 Ind Cas 949

In an administration suit valued at Rs 30,000 for the purpose of jurisdiction and at Rs 100 for the purpose of adjustment of accounts, wherein *ad valorem* court-fees were paid on the latter sum only together with Rs 10 apparently on the ground that the claim for administration was incapable of valuation, *held*, that such a suit was in essence a suit for accounts, within the meaning of section 7, Clause iv (f) of the Court Fees Act, and that the plaintiff is competent to value the claim for accounts approximately and to pay court-fees thereon, the balance of court-fees being payable under s 11 of the Court Fees Act, *Saraju Bala Dasi* v. *Jogmaya Dasi*, 45 Cal 634· 22 C W N 115. 26 C L J. 265 41 Ind Cas 693

An administration suit is a suit for accounts and court-fees are payable under s 7, iv (f) of the Court Fees Act *ad valorem* on the valuation made by the plaintiff, *C K Ummar* v *C K Ali Ummar*, 9 Ran 165. 133 I C 91 1931 A I R 146 (Ran.), *Ma Thin On* v *Ma Ngwe Hmon*, 12 Rangoon 512 1935 A I.R. 13 (Ran) The valuation for jurisdiction and court-fees should be the same, *Ma Fatima* v *Moun Bibi*, 7 Ran. 164: 118 I.C 122: 1929 A I R 211 (Ran)

Suit for declaration of title and administration and appointment of a receiver—Suit for a declaration of title after a true construction of the will of the testator and for declaration that the estate has been fully administered and that the executors are not entitled to remain in possession of the estate and for the appointment of a receiver, is a suit for declaration where a consequential relief, *viz*, administration of the estate and appointment of a receiver, has been prayed for and the High Court ordered *ad valorem* court-fees to be paid in the High Court as well as the Courts below, *Rup Chand Ghosh* v *Srimati Khirodamayee Dasi and others*, (1917) 27 C.W.N. 457: 75 Ind Cas. 567.

Suit for administration and payment to the plaintiff of his share.—A suit for administration of the estate of a deceased person and *inter alia* payment to the plaintiff of his share, is a suit for administration and accounts within the meaning of section 7, iv (f) of the Court Fees Act and court-fees calculated *ad valorem* on the valuation by the plaintiff in the suit, are payable on the plaint. The valuations for the purpose of jurisdiction and for court-fees are the same, *Shujauddin* v. *Ashaibi*, 100 P R. 1914

Other creditors.—"When, after the preliminary decree has been made, and creditors have been invited to establish their claims, if any, against the debtor, each creditor, who puts forward a claim not already transformed into a judgment debt, may

well be required to pay court-fees *ad valorem* on his application as if it were a plaint in a suit for the recovery of the sum he claims," *Sashi Bhusan* v. *Maharaja Manindra Chandra*, 44 Cal 890. 21 C.W N 1310: 24 C L J 448: 38 I C 835.

Contra.—a creditor who puts forward his claim in pursuance of the notification of the Court, after the preliminary decree in an administration suit, need not pay any court-fees, as such a claim cannot be deemed a plaint in a cross suit, *Ramaswami Ayyar* v *Rangaswami Ayyar*, 55 Mad 26· 61 M L.J. 933: 1931 M.W N 916· 34 L.W 429: 134 I C 1137: 1931 A I.R. 683 (Mad).

Principal and agent—set off.—A suit for accounts by a principal against his agent necessarily involves an undertaking by the plaintiff to pay to the defendant any sum that may be found due to the defendant by him on the taking of accounts, and it is unnecessary that the defendant should plead a set off or counter claim (In this case necessary court-fees were ordered to be paid and were paid), *Parmanand* v *Jagat Narain*, (1910) 32 All 525: 7 A L J 543: 6 I C. 163 See also *Ram Charan* v. *Bulagi*, 22 A L J 783: 83 I.C 800 1924 A I R 854 (All), but see *contra*, *Narasimha Rao* v *Zamindar of Tirmur*, 42 Mad. 873 (879, 880) · 53 I C 234, where the case in 32 All 525 was dissented from and the High Court said that the defendant cannot have a claim which is barred by limitation

Suit by a succeeding administrator.—A suit by a proceeding administrator to set aside a decree against the previous administrator and the sale in execution therefor is a suit for possession and the suit falls under section 7, paragraph V of the Court Fees Act, *Bai Meherbai* v *Maganchand*, 29 Bom 96: 6 Bom L.R 853

Partnership.—The application to wind up a partnership made under section 265 of the Contract Act, is in the nature of a suit for an account, and should be stamped accordingly, *Abad Ali* v. *Jamiruddin*, 13 C L R. 160 See also *Bhogilal* v. *Papat Bhai*, 7 Bom. 125; *Erakshah* v. *Adarji*, 7 Bom. 535.

Where some partners brought a suit for recovery of amounts due to them on the ground that the partnership was dissolved some years ago, the stamp duty payable on memorandum of appeal against the orders of the Lower Court, should be *ad valorem* fee as in a suit for accounts, *Ladubhai* v. *Revichand*, 6 Bom. 143; *Dhani Ram* v. *Bhagirath*, 22 Cal. 692; *In the matter of Bholanath*, 7 All L J. 546: 32 All. 517: 6 Ind Cas 832

A decree could be passed in favour of a defendant in a suit for taking accounts between partners of a dissolved partnership under Or. 20, Rule 15, C. P. C. on payment of necessary court-

fees, *Ram Charan* v *Bulaqui*, (1924) 46 All 858: 22 A L.J. 783 83 I C 880· 1924 A I R. 854 (All)

Court-fees payable—Under this paragraph the Court fees are payable according to the value of the relief sought and not according to the value of the subject-matter of the plaint, *Manohar Ganesh* v *Bawa Ram*, 2 Bom 219

The plaintiff is to give an estimate of the amount at which he values the relief sought and pay whatever court-fee is legally payable thereon, *Sita Ram* v *Hanuman Prasad*, 8 P.L T. 145: 100 I C 632 1927 A I R 413 (Patna)

The court-fee on the plaint is to be determined with reference to the provisions of section 7, iv (f) of the Court Fees Act, and the fee payable is to be calculated *ad valorem* upon the value of the relief sought as given in the plaint.

A judge, after having found in the initial stage of the case that, owing to plaintiff's inability to value the relief claimed, the plaint was sufficiently stamped with a ten rupee court-fee under Art 17 (vi) of the second Schedule of the Court Fees Act, can subsequently declare under section 11 of the Court Fees Act, that there is a deficiency which is liable to be made good, *Prince Mirza Suraiya Qudr* v *Nawab Qudsia Begum*, 24 Ind. Cas 643

When the amount due is found to be in excess—If the amount decreed be in excess of the amount at which the relief was valued, the deficiency in court-fees must be recovered as laid down in sction 11 of the Act, *San Paw* v. *Ma Yin*, 12 Bur L.T. 207: 55 Ind Cas 258

Appeal from the final decree—A party who has paid *ad valorem* court-fees in an appeal from the preliminary decree in a suit for accounts on the valuation made in the plaint, need not pay the same court-fee over again in the appeal from the final decree in that suit but need only pay *ad valorem* court-fees on any excess amount found to be due; *In re Supputhayammal*, 62 M.L.J. 624: 35 L W 621: 1932 M W N. 438: 1932 A.I.R. 453 (Mad.). See also *Kanchan Mandar* v. *Kamala Prasad*, 16 C L J. 564: 15 I.C. 572 *infra* *Contra*, *Kanti Chandra Tarafdar* v. *Radharaman*, 33 C.W.N. 743: 1929 A I.R. 815 (Cal.).

After the passing of the preliminary decree in a suit for accounts two persons were appointed as referees with the consent of the parties for the purpose of going into the accounts A decree was passed in accordance with their report. An appeal was filed with a court-fee of Rs 10 on the memorandum of appeal while the appellant claimed that an excess amount should have been awarded The High Court held that the appeal should be valued and *ad valorem* court-fees paid on that basis, *Mt.*

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fees, *Ram Charan* v. *Bulaqui*, (1924) 46 All 858: 22 A.L.J. 783: 83 I C. 880· 1924 A.I R 854 (All)

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A judge, after having found in the initial stage of the case that, owing to plaintiff's inability to value the relief claimed, the plaint was sufficiently stamped with a ten rupee court-fee under Art 17 (vi) of the second Schedule of the Court Fees Act, can subsequently declare under section 11 of the Court Fees Act, that there is a deficiency which is liable to be made good, *Prince Mirza Suraiya Qudr* v *Nawab Qudsia Begum*, 24 Ind Cas 643

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Niamati Bai v *Daulat Ram and another*, 1933 A.I.R. 633 (Lah): 144 I C 559 14 Lah. 738: 34 P.L R. 1079.

Appeal—Valuation.—An appeal from a preliminary decree in a suit for rendering of accounts and winding up of partnership must bear *ad valorem* court-fees on the amount of which the relief claimed is valued, *Dhupati Srinivasacharlu* v. *A Perindervamma*, 39 Mad 725 30 M L J. 402: 33 I.C. 604; *Kanji Mal* v. *Panna Lal*, 28 Ind Cas 262. But if during the pendency of appeal from the preliminary decree, the enquiry as to amount due is completed, and a smaller amount than the value of the appeal from preliminary decree, is found due, then court-fees are necessary in the appeal from the final decree, *Kanchan Mandar* v *Kamala Prasad*, 16 C L J. 564: 15 Ind Cas 572 In section 7 the amount of court-fee is to be computed, in the suits for accounts, according to the amount at which the relief sought is valued in the plaint or the memorandum of appeal, *Faizulla Khan* v *Mauladad Khan*, 56 I.A. 232: 10 Lah 737: 31 Bom L R 841 57 M L J. 281: 1929 A.I R 147 (P.C) But this is to be done only when the suit is for accounts properly so called, *Mahomedali* v. *Akbarali*, 36 Bom L R. 1234: 1935 A I R 69 (Bom)

Where the account is for a limited period—If the defence of the defendant be that he is liable to render accounts but only for a limited period owing to the operation of the statute of Limitation, then the defendant appellant can put his own valuation on the memorandum of appeal and is not bound to accept the valuation by the plaintiff, *Kanhaiya* v. *Seth Ram Sarup*, 44 All 542: 20 A.L J 416· 66 Ind Cas 841: (1923) All I.R 228 (Allahabad) See also *Kuldip Sahay* v. *Harihar Prasad Jha*, I L R. 3 Pat. 146: 75 Ind Cas 871: 1924 A.I.R. 161 (Patna).

Where the plaintiff loses and is ordered to pay a sum to the defendant—If a plaintiff approximately values his relief for accounts at Rs. 200 and on hearing he not only lost his suit but was ordered to pay Rs. 1,400 to the defendant It was held that the valuation of the appeal should be at Rs 1,600, the test being the value of the relief granted which is sought to be got rid of, *Shivandas Matumal* v. *Hariram and another*, 1933 A I R. 322 (Sind): 27 S.L R. 335.

Procedure where the court-fee is found insufficient.—The appellant whether he is a plaintiff or a defendant, in an appeal arising from an account suit can give the same valuation and pay court-fees on such notional valuation under s. 7, iv (f) of the Court Fees Act. Even if some of the items in respect of which he was appealing were definite amounts, the actual court-fee he pays should be supposed to cover actual sums decreed and

any uncertain sums in respect of which the relief is sought ....s 11 no doubt furnishes one method but for the protection of the interest of the Crown, it is necessary to indicate what the proper practice should be If the appellate Court after hearing the appeal comes to the conclusion in favour of the appellant in respect of a far larger sum than which the appellant has paid court-fees for, the proper thing would be to post the case for orders and then direct the appellant to pay additional court-fees and only then the judgment should be delivered and the decree allowed to be drawn up, *In re Nukala Venkatanandan*, 56 Mad 705: 1933 M W N 36. 64 M L J 122 37 L W. 106: 1933 A I R 330 (M): 141 I C 602

Suit—Valuation.—The Code of Civil Procedure (Act V of 1908) requires that the plaintiff should only approximately state the amount he claims See Order 7, Rule 2, C P C (Act V of 1908)

The plaintiff is, therefore, free to fix any value but the execution of the decree he might obtain is controlled by sec 11 of the Court Fees Act Section 11 precludes execution of the decree in case it exceeds such value until additional court-fee has been paid, *Govinda* v *Dayabhai*, 9 Bom 22

In a suit for account the plaintiff is entitled to value it approximately but if the Court thinks that the suit has been under-valued it can at any time apply section 54, C P C (Or 7, Rule 11) and reject the plaint, *Balwant Rao* v. *Bhima Sankar*, 13 Bom 517 This valuation determines the jurisdiction of the Court and also the amount of court-fees to be paid on the plaint at the time of filing the suit, *Khushall Chand* v. *Nagin Das*, 12 Bom 675, *Sellamuthu Seravagor* v. *Ram Swami Pillai*, 12 M L J. 66, *Hardayal* v. *Ram Deo*, (1924) A I R 354 (R.): I.L R 2 Ran 408: 3 Bur L J. 307.

But the plaintiff cannot afterwards amend the plaint by altering the valuation, especially if such alteration will affect the jurisdiction of Court, *Arogya* v. *Appachi*, 25 Mad. 543: 12 M.L J. 35; *Bai Amba* v. *Pranjivandas*, 19 Bom 198; *Bhagabantrai* v. *Mehta*, 18 Bom. 40. But if he places a low valuation and institutes the suit in a Court with a limited pecuniary jurisdiction, and if after enquiry, it is found that the plaintiff is entitled to larger sum which was not in the jurisdiction of the Court to decree the plaintiff is limited to the jurisdiction of that primary Court, *Golap Singh* v *Indra Coomar*, 13 C.W.N. 493: 9 C L J. 467: [illegible] *...rabarti* v. *Purna Ch. Bose*, 43 Cal [illegible] N. 504: 8 I C. 31; *Harjibhai* v. *Ja*[illegible] 1021.

The reason for allowing the plaintiff to put an arbitrary

value can be gathered from the fact that the plaintiff does not know how much is due to him, and as this can be definitely ascertained, only after an enquiry See *Gulab Khan* v. *Abdul Wahab Khan*, 31 Cal 365, *Manna Lal* v. *Samandu*, 46 P.R. 1906 94 P.L.R. 1906 See also *Rishikesh* v. *Melaram*, 94 I.C. 650. 1926 A.I.R. 242 (Lahore)

Under sec 7, iv (f), Court Fees Act, the plaintiff is obliged in a suit for accounts to state the amount at which he values the relief sought, and court-fees are payable *ad valorem* according to the amount at which the relief sought is valued in the plaint The plaintiff cannot put one value for the purpose of jurisdiction and then select one or two items and pay court-fees on the selected items with an additional court-fee of Rs 15 on other items, *Gourilal and others* v *Raja Babu*, 1929 A.I.R. 626 (P.)

In a suit for accounts the valuation for the purpose of jurisdiction and valuation for the purpose of court-fees should be the same; the valuation by the plaintiff fixes the jurisdiction of the trial Court which is not ousted if on enquiry an amount exceeding the pecuniary jurisdiction of the Court is found due, *Ishwarappa Manvi* v *Dhanji Gujjar*, 56 Bom 23: 34 Bom.L.R. 44. 1932 A.I.R. 111 (Bom.): 137 I.C. 702 See *Vershi Kanji* v *Taku Munji*, (1935) 37 Bom.L.R. 148 where separate valuations for court-fees and for assessment for pleader's fees were allowed [This decision seems incorrect.]

The plaintiff in a suit for accounts may put an arbitrary valuation The Court cannot ask the plaintiff to revise the valuation, even if he admits in evidence that a larger amount will be found due and to direct that the valuation be amended, *Kandaswami Pillai* v. *Arunachalam Pillai*, 1932 M.W.N. 979: 35 L.W. 846: 1932 A.I.R. 656 (Mad.): 139 I.C. 105

In *Inayat Husain* v. *Bashir Ahmed*, 1932 A.L.J. 416: 1932 A.I.R. 413 (All.), the Allahabad High Court held that (1) where the valuation of the suit is contested the value must be determined by the Court, (2) where the valuation can be ascertained correctly, the plaintiff cannot be allowed to put an arbitrary valuation upon his claim, nor can he be allowed to over-value or under-value his claim with a view to choose his forum

Valuation of the relief sought.—Section 7 says that *ad valorem* court-fees shall be paid "according to the amount at which the relief sought is valued in the plaint or memorandum of appeal." In all such suits "the plaintiff shall state the amount at which the relief sought" is valued. The proper meaning to be attached to the latter words is that the plaintiff shall truly state the amount at which he values the relief sought, and that it cannot mean that a plaintiff is entitled to put in a fictitious value

·hen the relief is capable of valuation That this is not a mere .atter of form becomes apparent when one considers the fact hat the valuation affects jurisdiction and decides the Court by which the case is to be tried, *Jogeshra* v *Durga Prasad Singh*, 6 All. 500: 12 A.L J. 844. 24 I C. 679

The valuation for purposes of court-fees is to be determined ·st and that for the purpose of jurisdiction must follow on ·· same; but the plaintiff in a suit in which a consequential ·elief is prayed cannot at one and the same time obtain the .ices of the highest possible tribunal for the determination · his claim and evade payment of *ad valorem* court-fees If ·or the purposes of jurisdiction he sets a high value on the relief by way of injunction, it is doing him no injustice to hold that "the relief sought" on which court-fees must be levied, *is the sum total of the two reliefs*, *Manni Lal* v *Radhey Gopalji*, 47 All 501: 23 A L J 344· 1925 A I R 602 (All) See also *Balkrishna Narayan* v *Jankibai*, 44 Bom 331· 22 Bom L R 289: 57 I C 340, *Sailendra* v *Ram Chandra*, 25 C W.N 768: 34 C L J 94· 66 I C 268

Order VII, Rule 1, C P. C requires that a plaint shall contain a statement of the value of the subject-matter of suit for the purposes of jurisdiction It is not contemplated that the subject-matter shall have two values, one purely arbitrary and fanciful for the purposes of jurisdiction and one in strict conformity to the real value for the purposes of court-fees In either case the valuation should conform to reality Therefore, when a plaint contains a valuation for the purposes of jurisdiction, it is a natural assumption that the same valuation would apply if it were necessary to have a valuation for an *ad valorem* court-fee A suit for an injunction and for the appointment of a receiver falls within the purview of section 7, iv (c) of the Court Fees Act, and under section 8 of the Suits Valuation Act, the value of such a suit for purposes of court-fees and jurisdiction must be the same If in such a suit the plaint does not state the value put by the plaintiff upon the *relief sought*, and there is no valuation for the purpose of computing *ad valorem* court-fees, the value for the purposes of jurisdiction must also be taken to be the value for the purposes of court-fees, *Pothi Annapurnayya* v *Pothi Nagaratnamma minor by next friend, etc*, 92 I.C 730· 1926 A I R 591 (Mad.).

Although it is for the plaintiff to state the amount at which he values the relief sought, yet, it is open to the Court, if a question be raised as to the true valuation to determine such question and in any event the value sought to be put by the plaintiff must be a reasonable one, but which may not be the value of the properties, *Mt. Zalur Bibi* v. *Sharifuddin Khan*, 154 I.C. 850: 1935 A.I R. 68 (Pat.).

PARAGRAPH V.

Scope.—*Suits for possession*—A suit for recovery of property on declaration that a deed of gift which is the basis of the defendant's title is not binding on the plaintiff owing to his minority and for cancellation of the same is really a suit for possession, *Afzal Husain* v *Shafiqunnessa*, 7 O W.N 571: 126 I C 688: 1930 A I.R 368 (Oudh): 1930 I R. 416 (Oudh).

A suit by a beneficiary under a trust for supplying the want of *Bairagis*, the plaintiff having an interest in the surplus income to set aside alienations by the trustees by way of mortgage, sale and lease, does not come under Art. 17B of Schedule II of the Court Fees Act (Madras Amendment) but comes under sec. 7, paragraph II of the Court Fees Act and not under sec. 7, iv (c) or sec. 7, para IX or sec. 7, para. XI of the Court Fees Act, *Venkatalal* v. *Kasaldap Bavaji*, 61 M L J. 39: 33 L.W. 206· 130 I.C 449: 1931 A.I.R. 24 (Mad).

Religious land—The fact that the land is "religious land" does not make any difference and render it incapable of valuation with reference to the value of similar lands in the neighbourhood and the plaint is to be stamped according to the value of the subject-matter, *Maung Meik* v *Kumara*, 60 Ind Cas 5: (1920) 3 U B R 236

S 7, paragraph V is applicable to suits for possession of immoveable property and no distinction is made between a suit for possession as a beneficial owner and a suit for possession as a trustee or as manager of a religious endowment The Legislature has laid down certain rules governing the court-fees payable on suits for possession of immoveable property and there is no justification for interpreting the word 'possession' as meaning possession as a beneficial owner. A suit for possession by a Mohant comes under this clause. The property excluding the *math* is to be valued at the market price, the *math* itself having no market value, *Parsottamanand Giri* v. *Mayanand Giri*, 54 All 869: 1932 A L J. 777: 142 I C. 251: 1932 A.I.R. 563 (All.).

A suit for possession may be by a proprietor, under-proprietor, lessee, mortgagee or a tenant There is no justification for qualifying the word 'possession' by reading into s 7, paragraph V, the word 'proprietory' A suit by a subsequent mortgagee to recover possession of certain mortgaged properties consisting of houses, groves, etc., from a prior mortgagee, is a suit for possession when no offer to return the purchase money is made and therefore does not come under s. 7, paragraph IX of the Court Fees Act and the plaint is to be stamped *ad valorem* on the value of the properties under paragraph V,

Sheo Ram Singh v. *Barkan Singh,* 14 O.L.J. 365: 8 O.W.N. 536: 134 I.C. 596: 1931 A.I.R. 366 (Oudh): 1931 I.R. 389 (Oudh).

A suit to eject an encroacher is within the scope of s. 7 (v) as recovery of possession is an essential element in such a suit, *Manikkam Pillai* v. *N. M. Nagasami Ayyar,* (1934) 67 M.L.J. 688: 40 L.W. 718: 1934 M.W.N. 1248: 152 I.C. 679: 1934 A.I.R. 714 (Mad.).

A suit by the manager of a *tarwad* against a junior member of the *tarwad* on the ground that the property in question was acquired by that junior member and his brother jointly and on the death of that brother his (half) share has passed to the *tarwad* and that the junior member is holding that half share of his brother adversely, is a suit for possession and does not fall either under s. 7, iv (b) or under Sch II, Art 17 of the Court Fees Act, *Kandunni Nair* v. *Ittunni Raman Nair and others,* 53 Mad 540: 58 M.L.J. 497: 31 L.W 826: 1930 M.W.N. 291: 127 I.C. 128: 1930 A.I.R 597 (Mad.). 1930 I.R. 944 (Mad.).

Question of title—A suit for possession on the basis of plaintiff's title as an adopted son, is a mere suit for possession and falls within s. 7, paragraph V of the Court Fees Act as a declaration of title as an adopted son is not claimed and is not necessary, *Maung Shein* v. *Ma Lon Ton,* 9 Rang 401: 134 I.C. 1263: 1931 A.I.R. 319 (Rang.). See *Maung Po Lu* v. *Bank of Chettinad,* 1934 A.I.R. 313 (Rang.).

A suit for the relief "that on proof of the plaintiff's right of ownership and of possession, and the invalidity of the sale deed, the plaintiff may be granted actual and proprietory possession of the six annas share by ejectment of the defendant," is a suit for possession and *mesne profits* and the court-fees are payable under s. 7, v (b) of the Court Fees Act as the lands formed part of a temporarily settled estate, *Amir Hasan Khan* v. *Hafiz Mahammad,* 1930 A.L.J 1100: 128 I.C 779: 1931 I.R. 107 (All.).

Appeal by the landlord—The plaintiff claiming a jote right in the land sued defendants 1 and 2 as tenants on the land and defendant no 3 as the landlord, for recovery of the possession of the jote. The trial Court passed a decree for possession against defendants 2 and 3 but dismissed the suit against defendant no. 1. The landlord (defendant no. 3) filed an appeal in the High Court on a court-fee of Rs 20 on the ground that he is concerned with a declaration that plaintiff is not his tenant. He was overruled and the High Court held that he must pay court-fees under s. 7, paragraph V as the suit was a suit for recovery of possession, *Haladhar Pal Chowdhury* v. *Sheikh*

PARAGRAPH V.

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Sheo Ram Singh v. *Barkan Singh,* 14 O.L.J. 365: 8 O.W.N. 536: 134 I.C. 596: 1931 A.I.R. 366 (Oudh). 1931 I.R. 389 (Oudh).

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Mangal Reza, 34 C.W N 217: 126 I.C. 777: 1930 A.I.R 793 (Cal).

Suits for recovery of possession by landlord.—Where a suit for possession is brought by the landlord against several persons, one being an admitted tenant and as between the others and the landlord, the relationship of landlord and tenant did not exist, the suit against the latter cannot be proceeded with without a declaration of title; the court-fee in the claim against the admitted tenant is *ad valorem* on one year's rent; *Pramatha Nath* v *Amiraddin*, 24 C W N. 151: 55 Ind Cas 178

A suit by an enamdar claiming both melavaram and kudivaram rights for a declaration of his title and for possession by ejecting the tenants who claim rights of occupancy in the lands, is a suit for declaration with a consequential relief *In re Majumdar Sobhandri Rao Pantulugaru and others*, (1932) 56 Mad 314 63 M L J 759: 1932 M.W N 1197: 36 L W. 701: 140 I C 462· 1933 A I R 42 (Mad)

Suits for recovery of possession by tenant—Where the tenant plaintiff sues for recovery of possession of land, and makes the admitted landlord as well as other persons who claim to be tenants under him parties to the suit, the court-fee is to be paid under sec 7, iv (c) on the valuation of the relief sought The valuation must not be an arbitrary valuation, *Ram Ekbal Singh* v *Baldeo Singh and others*, 19 C L J. 418: 25 Ind Cas 507 See also *Furzand Ali* v *Mohanth Lal*, 32 Cal 268; *Ram Raj* v *Girnandan*, 15 All 63 Where a suit for possession is brought by the tenant on declaration of his rights as an occupancy raiyat in a garden, the valuation is the value of the interest claimed by the plaintiff and not the entire interest, *i e*, the interest of the tenant plus the interest of the landlord, *Upendra* v. *Satcowrie*, 23 Ind Cas 964

A suit by a plaintiff alleging that he was a tenant on the land against the landlord and a third person who was in possessionn of the property, is not a suit between the landlord and the tenant and the court-fees are to be paid under s 7, v, *Musst. Bhagobai Devisingh* v. *Shiamlal Dwarkaprasad*, 1933 A I.R 312 (Nag.): 29 N L.R. 367: 147 I.C. 749.

Application.—The effect of clauses (a) to (d) of this paragraph is confined to the land in respect of which revenue might have been paid but not as regards leasehold lands, *Ram Ekbal* v. *Baldeo Singh*, 19 C.L J 418: 25 Ind Cas 507; *Bibi Kulsum* v. *Muhammad Hamid*, 45 Ind. Cas 928 (Patna); *Dhakeswar* v. *Jiva Chowdhury*, 3 Pat L.J. 448 But see *Habibul Hossein* v. *Mahomed Reja*, 8 Cal. 892: 10 C L.R. 385.

Land.—The word "land" as used in the Court Fees Act, does not include buildings, *Durga Singh* v. *Bisheswar Dayal*,

24 All 218: 28 All. W.N. 27, *Dayachand* v *Hemchand*, 4 Bom 515

Trees.—The trees standing on separate items of land need not be separately valued as these are included in the items themselves, *Subramania Ayyar* v *Rama Ayyar and others*, 27 L.W. 489 105 I C 881: 1927 A I R 1002 (Mad): 54 M.L J 67

Declaration and possession—See under *"declaration and possession" supra* and also under *"possession" infra*

"The Court is in all cases bound to adjudicate upon the matters in issue between the parties and it is not necessary for the plaintiff to pray that this should be done The real relief which the plaintiff seeks is the delivery of possession of the property by dispossession of the defendant, and if he asks for a decree in those terms when he is not bound first to ask for a declaration before such relief can be granted, I do not think that, merely because he asks the Court to adjudicate upon the matters in issue, the suit should be treated as a suit to obtain a declaratory decree with consequential relief," *Ramsumran Prasad* v *Govind Das*, 2 Pat 125: 1922 Pat C.W.N 291: 3 P L T. 704. 1 Pat L R 1: 68 I.C. 700: 1922 A I.R. 615 (Pat) F B

Even where the suit was one for a declaratory decree and also for possession, then the suit for possession having been specifically provided for by s 7, paragraph V, the suit is to be valued accordingly and court-fees paid under the provisions of that sub-section *Venkataswa Rao* v. *Venkatanarasinha*, 63 M.L J 764 36 L W. 225 1932 M W N 992: 139 I C. 17: 1932 A.I R 605 (Mad): 1932 I R 643 (Mad)

Suit by a succeeding administrator—A decree on award having been passed against an administrator at the instance of the creditor of the estate represented by the administrator, the decree-holder in execution of the decree put up a property to sale and purchased it himself with the sanction of the Court. A succeeding administrator brought a suit to set aside the decree and the sale in execution thereof on the ground that under section 282 of the Succession Act (Act X of 1865), the decree-holder was only entitled to a rateable distribution among the creditors of the estate; held, that the case fell under section 7, paragraph V of the Court Fees Act, *Bai Meherbai* v. *Maganchand*, 29 Bom. 96: 6 Bom L R 853.

Raiyat at fixed rates.—A suit to eject a tenant at fixed rates is a suit for possession within this paragraph and the valuation for the purposes of jurisdiction and court-fees is the value of the subject-matter of suit, *i e*, the tenant-right and

not of the land itself nor one year's rent, *Ram Raj Tewari* v. *Girnandan*, 15 All 63: (1892) 12 All. W.N. 240.

When a landlord claims to eject a tenant, he claims to recover the tenant-right in the holding, and the stamp duty chargeable on the plaint, should be determined with reference to the market-value of that right, *Ajodhya* v. *Daibee*, 3 Agra 5. But see *Kebul Ram Mundul* v *W S Wells*, 24 W R. 454, where it was held that the stamp is to be paid on the valuation by the plaintiff

Where ejectment is asked for breach of the covenant, and the title of the plaintiff, as appearing from the plaint, is complete the court-fee payable is as in a suit for possession under section 7 (v) to be ascertained by reference to sub-clause (e) of the same clause, *Mahomed Ibrahim Shahib Khatun* v. *Bhymeah A Ismailyi*, 1 L B R 303 But see sec 7 (xi) (cc) for cases of ejectment of tenants by landlords and of tenants holding over after expiry of the period of written lease, and the cases noted there

Milkiat and Khudkast.—A claim for possession of Milkiat does not include a claim for possession of the Khudkast The test is "would the plaintiff be entitled to the direct possession of Khudkast lands in a suit for possession of Milkiat share? .... If the claim for possession of Milkiat shares included the claim for the possession of Khudkast lands then clearly there was no necessity for asking for any relief in respect of the Khudkast land" The result is that where the claim for khudkast land is not included in the claim for Milkiat shares then the claim as to khudkast lands should be separately valued and *ad valorem* court-fees paid on that valuation, *Raghubans Narain Singh* v *Khub Lal Singh*, 80 I.C 439 6 Pat L T. 255.

Suit by a lessee.—Where the lessee sues for possession of land comprised in the lease but of which possession is not given, the suit is not a suit for specific performance of contract but is governed by section 7, paragraph V of the Court Fees Act, *Ghulam Sabir* v *Narain Prasad*, (1908), 28 All.W N. 201: 5 All L J. 534.

Suit for possession by mortgagee.—A suit for possession by a mortgagee by conditional sale, claiming to have foreclosed the mortgage under Regulation xcii of 1806, is a suit for possession, *Tellu Mal* v *Lal Singh*, 20 P.R 1893.

Section 7, v (d) applies to a suit by the usufructuary-mortgagee to recover possession of the property, and the property is to be valued at the market value, which means in such cases the mortgagee's interest in the property, *i e.*, the amount of mortgage-money, *Mahdi* v. *Gajodhar*, 73 Ind. Cas. 244: 1924 A I R. (Oudh) 163

Suit for possession by parties who were not parties to the mortgage deed—A suit by persons not parties to the mortgage bond on the ground that the mortgagor has mortgaged properties in excess of his share in the properties and consequently the mortgagee auction purchaser is entitled to all the properties mortgaged and for recovery of their share in the properties is a suit for possession of those properties, *Musst Shahar Bano Begum* v. *Raj Bahadur Singh*, 1933 A I R 505 (Oudh) 149 I C 1138

Redemption and possession—Where the suit is one for possession but the Court allowed redemption on payment of a certain sum due as mortgage money, the nature of the suit is not thereby changed, *Purna Singh* v *Kesar Singh*, 39 P R. 1907. 119 P L R 1907, but when the mortgagor asks for redemption and possession in a suit for cancellation of the mortgage deed and possession, the suit comes under section 7, paragraph ix of the Court Fees Act, *Karaman Singh* v *Norman Cockell*, 1 C W N. 670

Valuation—Valuation for jurisdiction in a suit for possession after a decree for foreclosure in a mortgage by conditional sale is not to be calculated under the Court Fees Act, *Ahalyabai Debya* v *Shama Charan Bose*, 1 C L.R. 473

Suit for partition and separate possession—Suit for partition and separate possession of joint family property comes under this paragraph according to Bombay High Court. It is the market value of the land and houses that determines jurisdiction, *Dagdu* v *Totaram*, 11 Bom L R. 1074: 33 Bom. 658.

Suit by reversioners—A suit by a reversioner on the death of a Hindu widow to recover possession of immoveable property, which was in his possession as a limited owner, is a suit for possession only although the plaint contained a prayer for declaration that the lease is not binding upon him as the institution of the suit indicates his election to treat it as a nullity, *Bijoy Gopal Mookherjee* v. *Krishna Mahini Debi*, (1907) 34 I A 87: 34 Cal. 329: 4 A L J 329: 9 Bom L R. 602: 11 C.W.N. 424: 5 C.L J. 334: 17 M L J 154, *Ramakrishnayya* v. *Peda Sheshamma*, 41 L.W. 488: 1935 M W.N. 406: 1935 A I.R. 346 (Mad).

Specific performance and possession—The plaint in a suit for specific performance of contract and possession should be stamped under section 7, paragraph V according to the value of the subject-matter, *Madan Mohan Singh* v *Gaja Prasad Singh*, 14 C L J. 159: 11 Ind Cas 228

The plaintiff sued for recovery of possession of a mine, for *mesne profits* and damages alleging that she is a transferee from the grantee from the mother of the 1st defendant, who has since then entered into an agreement with other persons, whom

he had authorised to enter upon the land, to grant them a lease The plaintiff was unable to obtain possession of the property claimed by her, and her suit was in substance a suit for possession, *held* that the suit fell under section 7, paragraph V and not under section 7, paragraph XI (e) or under section 7, iv (c) of this Act, *Sundar Lal Marwari* v *Jessie Caroline Murray*, 16 C L J 375· 16 Ind Cas 963

Where the plaintiff alleged that the defendant agreed to sell certain land to him and had received part of the consideration money and the present suit is one for possession of the land and also that the defendant may be ordered to execute a sale deed and have it registered on receipt of the balance of the consideration *Held*, that the suit is one for possession and other prayers are ancillary to that prayer and the court-fee is payable under section 7, paragraph V of the Court Fees Act, *Gopal Das* v *Parmanand*, 60 Ind Cas 512; *Nihal Singh* v *Sewa Ram*, 38 All 292 14 All L J 434: 55 Ind Cas 275: *Nathe Khan* v *Muhammad Khan*, 128 P W.R 1918: 46 Ind Cas 534 See also cases noted under "*specific performance and possession*" *infra*

Valuation.—*Declaration and possession*—The plaint in a suit for declaration and possession is to be stamped and valued under this paragraph as the suit for possession has been specifically provided for under this paragraph, *Venkatasiva Rao* v. *Venkatanarasimha*, 56 Mad 212 63 M L J 764 36 L W 225· 1932 M W N 992 139 I C 317 1932 A I R 605 (Mad): 1932 I R 643 (M)

Suits by reversioners—The valuation for jurisdiction in a suit for possession by a limited reversioner against another limited owner in possession of immoveable property, in relation to property alienated by the latter, is the market value of the property alienated, *Dhanabaggiammal* v *Mari Ammal and others*, 36 L.W. 483: 1932 M.W N 780 1932 A I R 671 (Mad): 139 I C 471: 1932 A I R 671 (Mad)

Value of improvements.

Appeal—Where the tenant-right was valued at Rs 50 and the tenant claimed Rs 500 as value of the improvements which claim was disallowed, *held* in an appeal by the tenant for compensation only, the memorandum is to be stamped as in a suit for possession of land, and that the claim for improvements was not the subject-matter of suit but merely incidental to the proceedings, *Reference under Court Fees Act*, 23 Mad 84.

A memorandum of appeal by the defendants in an ejectment suit against the refusal of the lower Court to grant them compensation for buildings, was stamped in the same way as

the plaint of the plaintiffs claiming ejectment On objection the High Court held that as the memorandum is not confined to the question of compensation only but also raised the question of title also, the subject-matter in dispute is the claim for possession and the fee paid is sufficient. *Pathumma Umma* v *Mohideen*, 110 I C 752 1928 A I R 929 (M)

Reversioners.—A suit by reversioner for possession of land, after a decree declaring their right to the possession of the land, on the death of the alienor, requires to be valued for the jurisdiction and court fee on the market value of the land No additional court-fees need be paid for the value of the buildings put up by the alienees as the reversioners are entitled to ignore the buildings and leave to the alienees to remove them in the way they like, *Durga Das* v *Nihal Chand*, 110 I C 319· 1928 A I R 832 (Lah)

Clause (a).—*Application*—A plaintiff cannot avail himself of Clause (a) of paragraph V of section 7 of the Court Fees Act unless he brings his case strictly within its terms, and for that purpose the determining factor is the land in suit and not a larger property in which it may be included The lands must further be recorded in the Collector's register as separately assessed with revenue, within the meaning of clause (a) of para (v) of section 7, *Chandra Narayan Singh* v *Ashutosh Deo*, 41 Cal 812 18 C W N 659 19 C L J 342 23 Ind Cas 89

Cl (a) will apply only to a suit where the prayer is for possession of a half, one third or any other fractional share of the entire estate and will not apply to a suit for a plot of land in the estate *Kandasami Goundan* v *Subbai Goundan*, 46 M L J 345· 1927 M W N 338 34 M L T 92: 77 Ind Cas 781· 1924 A I R 646 (Mad)

Collector's register.—In Punjab the jamabandi should be treated as Collector's Register for purposes of court-fees. *Muhr Ahmad* v *Azim Bakhsh*, 37 P L R 41: 1935 A I R 331 (Lah.).

Bagayat land—Paying revenue to Government should be valued, for the purposes of court-fees under Clause (a) and not under Clause (e) of this paragraph, *Raghu* v. *Tellapa*, 1884 P.J 50

The conversion of an assessed arable land into a cocoanut tope does not make section 7 (v) (a) inapplicable and the trees standing thereon should not be separately valued. *Kullappa Gounder* v. *Abdul Rahim Sahib*, 40 Mad. 824: 5 L.W. 270: 21 M L J 251: 39 Ind Cas 251 Growing cocoanuts on a rice field must be taken to be an election by the tenant to raise that particular kind of crop, *Venkayya* v. *Ramasami*, 22 Mad. 39: S

M L J 278; *Murugesa Chetti* v *Chima Thambi Goundan*, 24 Mad 421

Definite share of an estate—A definite share does not mean a definite share separately assessed with revenue When land which is the subject-matter of a suit is a definite share (such as five annas) of an estate paying annual revenue to Government, the court-fee should be fixed on the value mentioned, *i.e.*, ten times the proportionate revenue payable annually. It is true that the second part of cl (a) contemplates land which is part of a permanently-settled estate, such part having been separately assessed by the Collector with annual revenue If the Legislature had intended that the define share mentioned in the 1st part of cl (a) must be also a definite share separately assessed with revenue by the Collector, as in the second part of that clause, it would have said so, *Bunad Lal* v *Shyam Lal*, 12 C.W N 990, but in *Chandra Narayan* v *Ashutosh*, 41 Cal. 812: 18 C W.N 659· 19 C L J 342 28 I C 89, the above view was not accepted

Definite share in a subordinate tenure—The plaint in a suit by a *subordinate tenureholder* to recover possession of a definite share in a permanently-settled area, should be stamped according to clause (a) of paragraph (v) of section 7, *Habibul Hossein* v *Mahomed Reza*, 8 Cal 892 10 C L R 385.

A share in an under-proprietary-tenure in a permanently-settled village, is a definite share of the estate as a whole and the court-fee payable in a suit for possession of such share is to be calculated on ten times the revenue payable on the share in suit The Judicial Commissioner said· "who pays the Revenue to Government is immaterial for the purpose of determining the court-fees payable on such a claim........... "the 5 annas 4 pies share of the subject-matter (the under-tenure) is certainly a definite share of the estate as a whole which pays annual revenue to Government, and as such revenue is permanently settled, it follows that the amount of the court-fees payable by the plaintiff in this suit must be calculated with reference to ten times the revenue payable," *Swaminath* v. *Jang Bahadur Sing*, 24 O C 39: 7 O.L J 403: 58 Ind Cas. 132 (133) See *contra—Bibi Kulsum* v. *Muhammad Hamid*, 45 Ind Cas. 928 (Patna).

Clause (b).—*Fractional share*—When a part of an estate paying annual revenue to Government under a settlement which is not permanent, is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession, or to enforce a right of pre-emption in respect of *a fractional share of that part*, shall, for the purpose of computation of the amount of court-fee payable in the suit,

be deemed not to exceed five times the revenue separately assessed on that part as may be rateably payable in respect of the same, *Government of India Notification*, No 1746, dated 4th April, 1889. See also *Reference under the Court Fees Act*, 16 All 493 (494, 495): 1894 A W N 174, *Chandhan* v *Bishan Singh*, (1911) 33 All 630

The *fractional share* of an estate covers the claim for a definite area within a survey chamber, *Subramania Aiyar* v *Rama Ayyar and others*, 105 I C 881 1927 A I R 1002 (M) 54 M L J 67 27 L W 489, dissenting from 16 All 493 and 33 All 630

Definite share of an estate—In a *Bhaiya chera* village the plaintiff sued to pre-empt certain plots of lands measuring half a kata paying revenue to Government *Held*, that the property sold was a definite share of an estate paying revenue to Government and the court-fee payable was under section 7 (v) (b) of the Court Fees Act, *Zaharia* v *Gopal*, 3 A L J 511 (1906) 26 A.W N 195

In a suit for declaration of right to land and possession of definite shares of estate paying an annual revenue to Government but not permanently, the plaint is to be stamped with a court-fee calculated on five times the revenue payable in respect of the share, *Ishri Dial* v *Kishen Das*, 1 A W N 5

Khatas—A khewat khata is not a 'definite share' of an estate, as it is not a 'definite share' of the mahal It is merely a part of the mahal, but not a fractional share or definite share of the mahal, although it is assessed with a definite share of the revenue assessed upon the mahal It follows that a fractional share of a "khewat khata" is not a 'definite share' of an estate So if the suit were for the possession of an entire khewat khata the court-fee would be payable *ad valorem* under sec. 7 (v) (b) upon five times the revenue assessed upon the khata, a suit for fractional share of khewat khata comes under sec 7 (v) (d) of the Court Fees Act and *ad valorem* court-fees on the market value are to be paid, *Musst. Haliman* v. *Musst. Mediya*, 55 All 531: 1933 A L.J. 398: 1933 A I.R. 414 (All.): 145 I C 332

In a suit for possession of a *khata* jointly with the defendant, the entire *khata* being part of revenue paying estate and recorded in the Collector's Register as separately assessed with revenue, the value of the suit must be deemed to be five times the revenue payable on the *khata*, *Ganda Mal* v. *Musst Mahato*, 1878 P.R 67.

The plaint in a suit for possession of under-proprietory rights in plots forming separate *khatas* in themselves, which must be taken to be separately assessed with Government revenue

when they are so assessed with rent, which the *khatas* as a whole are liable to pay to the superior proprietor, is to be stamped as if the *khatas* were separately assessed with revenue, *Mahomed Hanif* v *Gobardhan Das*, 7 O W N 956: 128 I.C. 286. 1930 A I R 520 (Oudh). 1931 I R 46 (Oudh)

Application.—As to mokrari lease of a definite share, this sub-section does not apply, *Bibi Kulsum* v *Muhammad Hamid*, 45 I C. 928 (Patna)

Where entire field plots are separately assessed to revenue then section 7 (v) (b) applies. *Ma Shin* v. *Maung Hman and others*, 1924 A I R 102 (R) 79 I C 579· *Maung Po Lu* v *Bank of Chettinad*, 1934 A I R 313 (Rang.)

A suit for possession of land assessed to revenue by setting aside the sale in favour of the defendant, falls under section 7 (v) (b) of the Court Fees Act, *Sarju and another* v. *Sheoraj*, 94 I C 179 1926 A I R 380 (Oudh) 13 O L J 124.

Inam Lands—Where *inam* lands were for a long time treated as ryotwari land but after the institution of the suit by the plaintiffs for possession were *recorded* as *inam* lands. *Held*, that the valuation is to be on the basis that the lands are ryotwari lands at five times the revenue payable under section 7 (v) (b) of the Court Fees Act, *Narayani Mandal* v *Secretary of State*, 41 Ind Cas 167

Reversioners.—A suit by Hindu reversioners, asking that a sale deed be declared null and void as against them and that possession of the property be given to them is an ordinary suit for possession of property and the court-fee payable thereon is to be calculated *ad valorem* on five times the Government Revenue, as it is not necessary for the plaintiffs to ask for any declaration, *Tika Ram* v. *Saliq Ram*, 18 A L J 903: 57 Ind. Cas 494: but see *Chandan* v. *Bishun Singh*, 8 A L J 798

Clause (c).—*Application*—Before a party can rely upon clause (c) of paragraph (v) of section 7 of the Court Fees Act, he must establish that the land in suit pays no revenue, permanently or temporarily settled thereon, or has been partially exempted from such payment or is charged with a fixed payment in lieu of such revenue, *Chandra Narayan Singh* v. *Ashutosh Deo*, 41 Cal 812: 18 C W N 659· 19 C L J. 342: 23 Ind Cas 89 See also *Chandra Sekhar* v *Thakurji Maharaj*, (1935) A.L.J 548.

Paramba in Malabar—"In Malabar the assessment is levied upon the cocoanut, areca or jack trees which grow in parambas. If a paramba contains no cocoanut, areca or jack trees, no assessment is charged In fact in Malabar a tree tax is substituted for the land assessment, and whether or not a paramba

is assessed depends upon the nature of the trees grown therein It is, therefore, evident that parambas should either be classed as lands paying no revenue or as gardens. . . We are of opinion that the term refers primarily to garden in English sense, ornamental or pleasure or vegetable, and that parambas do not ordinarily come under that category... The Acting District Judge will be informed that in case of parambas the amount of fees payable under Act VII of 1870, is to be computed either under sub-section (c) or (e) of section 7, clause (v) according to the circumstances of each case," *Audathodan Moidin v Pullambath Mamally,* 12 Mad 301

When the plaintiff sued for possession of colony land and stamped the plaint with a court-fee calculated on five times the revenue it was held that court-fees should be paid on the market value of the land and valuation for the purpose of jurisdiction should be at the same figure, *Wasawa Ram v Bahadur Chand,* 194 P L R 1914 · 25 I C 24

Land subject to fluctuating assessment—In a suit for possession of land subject to a fluctuating assessment, the court-fee payable is governed, not by clause (b) or clause (d) but by the clause (c) of section 7, paragraph (v) of the Court Fees Act, *Mahna Singh v Bahadur Singh,* 100 P R 1919. 50 Ind. Cas. 142

"*Such Revenue*"—The words "*such revenue*" mean "annual revenue payable to Government"—*Ibid*

The year next before the date of presenting the plaint—Means a period of 365 days reckoned backwards from the date of presentation of the plaint, *Ghasi Ram v Har Govinda,* 28 All 411 3 A L J 244 26 A W N 66 See *Chandra Sekhar v Thakurji Maharaj,* (1935) A L J 548 where the year was calculated according to the Fasli year according to which the revenue was payable

Clause (d). Not a definite share of an estate.—The *principle* seems to be that if the suit be not for a definite share, say a fourth or a fifth share, of a separately assessed estate, then the court-fees payable is to be valculated on 5 times the revenue assessed on that share, but if the suit be for distinct plots and not a definite share then the court-fee is to be paid on the market value of the share. *Reference under the Court Fees Act, 1870, section 5,* 16 All. 493: 13 A.W.N. 174.

Where the subject-matter of suit consists of individual field plots forming a part of the holding but not separately assessed nor an entire holding or a definite share of a holding, the court-fees are to be assessed under section 7 (v) (d) and not under section 7 (v) (b) of the Court Fees Act, *Ma Sha Ma v. L S M. Somasundaram Chetti,* 75 Ind Cas 217: 1923 A.I R. 246

(Rang); *Ma Shin* v. *Maung Hman*, 79 I C. 579: 1923 A I R 102 (R).

In a suit to recover possession of specific plots of land not constituting a definite share of a distinct revenue-paying area and not being separately assessed with revenue, the court-fees should be assessed on the market value of the land in suit. *Godavarthi Mangamma* v *Gadavarthi Sundaramma*, 19 M L T 226 (1916) M W N 325: 33 Ind Cas 683

A suit by a ryot against another ryot for possession of a plot of land forming part of a Zemindary estate is governed by sub-clause (d) of clause (v) of section 7 of the Court Fees Act Where a Court finds that a suit valued under clause (a) falls under clause (d) of paragraph (v) of sec 7 of the Court Fees Act ,it should call upon the plaintiff to state what the market value of the land is and after determining the market value should order the plaintiff to pay the proper court-fees and fix the time for payment and in case of failing to pay to reject the plaint, *Kandasamy* v *Subbai*, 77 Ind Cas 781· 46 M L.J. 345: 1924 M W N. 338: 34 M L T 92 1924 A I R 646 (Mad).

The court-fee payable in respect of a suit for recovery of land forming part of an entire area, but neither sub-divided nor separately assessed to land revenue, must be computed on the market value of the land sued for under section 7 (v) (d) of the Court Fees Act, *Godavarthy Sundaramma* v *Godavarthy Mangamma*, 34 M L J 538· 47 Ind Cas 543 8 L W 88

A suit for a share in a specific plot of land which is not separately assessed to revenue, is governed by s 7, para. 5, cl (d) of the Court Fees Act and the court-fees payable will be *ad valorem* on the market-value of the land which for the purpose of jurisdiction will be governed by rules framed by the Local Government, *Rajwant Singh* v *Mutalli*, 116 I.C. 209. 1930 A I R 182 (Lah)

Valuation.—A suit by a person for possession as a quondum owner of land and not for a declaration as to land, is to be valued at 30 times the assessment on the land for the purpose of jurisdiction. *Khuda Baksh and another* v *Ahmad and others*, 1930 A I R 18 (Lah): 120 I C. 794.

Construction of cl (d).—In *Buniad Lal* v. *Shyam Lal*, 12 C W N. 990, the Calcutta High Court said. "clause (d) is in two parts but those parts are linked together by conjunction 'and'—therein differing from cl. (a) which uses the disjunctive 'or'. The principle underlying the distinction between the two clauses seems to be that the court-fees must be paid on the market value of the distinct plots because they may be the most valuable part of the estate and the rule of proportion not having been applied by the Collector cannot be invoked by the owner." But see

contra—Chandra Narayan v *Ashutosh*, 41 Cal. 812: 18 C.W.N. 659. 19 C L J 342 23 I.C 89

Market Value—The expression *"market value"* in section 7 (v) (d) means market value of the subject-matter in dispute. The "market value" of a suit for possession by a usufructuary mortgagee is the mortgage money, *Madhi* v. *Gajadhar*, 73 Ind. Cas 244 See also *Raja Gopala Naidu* v *Ramasubramania Aiyar*, 46 Mad 782 45 M L J 274 1923 M.W N. 550. 74 Ind. Cas 198: 18 L W 326 1924 A I R 19 (Madras) F.B.

Reversioners—When the reversioners sued for specific plots of land totalling 11 bighas and 77 biswas of land out of 17 bighas of land assessed with a revenue of Rs. 19-7-0 but did not sue as two-third share of the said 17 bighas, *held* that court-fee should be paid on the market value of the land and not on 5 (five) times the revenue payable, *Chandan* v *Bishun Singh*, 8 A L J 798 Where the subject-matter is not a definite share, the court-fees must be calculated under section 7 (v) (d), *Musst, Jian* v *Musst Nadir Nishan*, 6 P.R (1883).

For court-fees payable, see Government Notification, dated 10th September 1889, No 4650, clause 18 in the Appendix

Ghatwali Lands—In a suit for recovery of possession of five Ghatwali Mahals where the property in suit consisted of five Ghatwali Mahals, and was included in an aggregate of 52 Ghatwali Mahals for which a sum of Rs 16,183 was payable annually as *sudder jama*, no apportionment of this sum was made with reference to the several tenures. It appeared from the Collector's Register that a sum of Rs 22,494 was collected by Government from 52 Ghatwali Mahals out of which the Goverment retained a sum of Rs. 16,183 on account of *sudder jama* and paid the balance to the zemindar within whose estate the Ghatwali land was originally comprised. The collections from the five G[illegible] 7 748-12-8. *Held*, that Cl[illegible] the Court Fees Act wa[illegible] t-matter was the mar[illegible] 2-8, not the revenue payable in respect of those five Ghatwali [illegible] that even if the disputed land was deemed as part of paying estate, it was not recorded in the Collectors' R[illegible] separately assessed with revenue within the meaning of (a) of paragraph V of section 7 of the Court Fees Act, *Narayan Singh* v. *Ashutosh Deo*, 41 Cal 812: 18 C.W. 19 C.L.J. 342: 23 Ind Cas. 89

The plaint in a suit to recover possession of a tenure which is not a definite share of an estate payi[illegible] to Government, is to be stamped with court-fees a[illegible]

the market value of the lands, *Jogendra Narayan Singh and another* v *Radha Prasad Singh*, 13 P L T 590: 140 I.C. 817: 1932 A I R 319 (Patna)

Indigo factory—In suits to recover indigo factory court-fees are payable on the market value of the buildings and not according to the value of the site, *Durga Singh* v *Bisheshar Dayal*, 24 All 218 22 A W N 27

In a suit for recovery of certain land after removing the building, illegally erected thereon by the defendant, the value of the land alone will be taken into account and not the value of the building, *Ramaswami* v *Gundappa*, 7 M L J. 49. See also *Muthu Namasivayalla* v *Subramania*, 24 M.L.J. 37.

But if there be permanent structures which are not sought to be demolished then the value of the house must be taken into account, *Nihalchand* v *Uday Ram*, 1886 A W.N. 106

Temple—An ancient temple devoted absolutely and in perpetuity to religious purposes has no market value and there cannot be any market value at all Therefore suits relating to such temples come under Sch II, Art 17 (vi) of the Court Fees Act and has to be dealt with as a matter "not otherwise provided for" It is doubtful whether such a temple can be considered to be a house, *Rajagopala Naidu* v *Ramasubramania Ayyar*, I L R 46 Mad 782 (789, 790) 45 M L J 274: 1923 M W N 550 18 L W 326 33 M L T 21 74 I C 198: 1924 A I R 19 (Madras)

Proviso 1.—The three clauses of the proviso seem to apply only to lands which have been subjected to a survey settlement as ordinarily understood and legally provided for in the Bombay Presidency, the first clause being applicable to land settled for a period not exceeding thirty years, the second to lands settled for a longer period or permanently, and the third to *inam* (alienated) lands on which the whole or a part of the survey assessment has been expressly remitted, per *Birdwood* J. in *Alachela* v. *Oghadbhai Thakersi*, 11 Bom 541 (549) (F B.).

Khoti estate is an estate paying revenue to Government upon which an assessment is temporarily settled, and a suit for its recovery should be assessed at eight times the annual assessment under Act XXVI of 1867, Schedule B, Art II, Note (a), Special Rule 1, for the Bombay Presidency, *Ex parte Vithal*, 4 Bom H C A C. 148

Proviso 3.—Proviso 3 to paragraph V of section 7 has reference only to the rate of remission at the date of suit It has no reference to remissions previously made, but no longer existing, *Balvant Ram Chandra* v *The Secretary of State*, (1905) 29 Bom. 480: 7 Bom L R. 497.

The proprietor of a talukdari village who had, under a settlement from Government for a period of twenty-two years, agreed to pay an annual *jama* of graduated assessment instead of full survey assessment of the whole village, sued for possession of 353 acres and 2 grantees of land and claimed Rs 2,100 as *mesne profits* and obtained a decree, against this the defendant appealed to the High Court valuing his claim at Rs 151-0-9 for the portion of land decreed On the report of the taxing officer, held by the majority of the Full Bench, that the difference in amount between the *jama* and the full survey assessment was a remission, and therefore a suit for possession of lands in this village was to be valued according to clause 3 of the proviso to Article V of section 7 of the Court Fees Act (VII of 1870), *Alachela v Oghadbhai Thakersi*, F B 11 Bom 541 (548)

The remission contemplated by clause 3 of the proviso is an express remission, and not a mere difference in amount between actual assessment payable by talukdar and the survey assessment, *Bavaji Mohanji v Pemjabhai Hambhai*, 1881 P J 177 11 Bom 550 (notes)

Clause (e).—*Suit for the possession of a house.*—*Ad valorem* court-fee should be levied on the value of the house and not on its rent, *In the Goods of Ram Chandra Das*, 9 B L R 30 18 W R 153 In a suit for possession the valuation would be the market value of the house, *Parsick v Parsick*, 72 P R 1899 See also *Abdur Rahman v Charagdin*, 19 P R 1908 129 P L R 1908 38 P W R 1908 F B But this was before the amendment in 1905 by cl (xi) (cc) was inserted. See also cases under paragraph XI (cc) of section 7, *Sundar Das v Musst Umda Jan*, 82 I C 614 1924 A I R 1 (Lahore).

The plaintiff brought a suit on the ground that the defendants are licensee-tenants-at-will of the house they are residing in but the house really belongs to her and she had served a notice on them to quit but they have set up an oral gift by her to them and refuses to vacate the house; that they may be ordered to vacate the house and garden in suit The trial Court held that the suit is a suit for declaration with a consequential relief and that *ad valorem* court-fee is payable on the value of the house and garden which it found to be in excess of the valuation made by the plaintiff and returned the plaint. The lower appellate Court affirmed this decision on appeal The High Court in revision held that the suit as framed is a suit for ejectment. The prayer for determination of plaintiff's title was only incidentally made in the plaint. The court-fee is payable in accordance with the market value of the subject-matter of the suit The subject-matter is the right to eject the defendants and the value of that right is the value at which the

defendant's right to remain in the house under license is valued, *Musst Barkatunnisa* v. *Musst Kaniz Fatima*, I.L.R. 5 Patna 631 98 I C 817 1927 A I R 140 (Patna).

A suit to recover a building site, which was granted by the Collector and subsequently cancelled after the plaintiff has begun to build upon it, is a suit for the house and the site and the court-fees in such a case are to be assessed under s 7, v (e) of the Court Fees Act upon the market value of the land and such part of the building as was already built by the plaintiff and not under s 7, v (a) of the Court Fees Act merely on the revenue assessed upon the site *Per Rupchand A. J. C*—The word 'house' means a building used as a dwelling place and includes the land on which such building is erected, *Mahomed Taher* v *Pir Bux*, 130 I C. 550 1931 A.I R 6 (Sind): 1931 I R 38 (Sind)

Garden.—For suits for possession of a garden by a tenant on declaration of his occupancy right, see *Upendra Chandra Mitra* v *Satcouri Dhar*, 23 Ind Cas 964, *supra*

A garden primarily means an ornamental or pleasure or vegetable garden, yet it is a question of fact which must be decided in each case. *Audathodan Moidin* v *Pullambath Mamally*, 12 Mad 301

A few isolated trees on a piece of land will not make it a garden, but where a number of trees are planted on a particular piece of land which is well defined and can be marked off from the rest of the land, it is difficult to see why the particular plot should not be treated as a garden, if the land is used for cultivation of flowers, fruits or vegetables In suits in respect of land on which cocoanut trees have been planted, the question whether it is a garden or not and whether for the purpose of determination of jurisdiction it fell under paragraph (v) (c) or (v) (e) is a question of fact to be determined on the evidence in each case Whether the land is assessed or unassessed it will fall under paragraph (v) (e) if it is a garden, *Abdul Rahim Shahib* v. *Kullappa Gounden*, 18 M L T 243 reversed on appeal in *Kullappa Gounden* v. *Abdul Rahim Shahib*, 40 Mad 824: 5 L.W. 270. 21 M.L.T 251: 39 Ind Cas 254, where it was held that a garden means an ornamental or pleasure or vegetable garden and the fact that cocoanut trees were planted does not make it a garden.

In a suit for land though assessed with land revenue forming a garden and two houses, the valuation for the purposes of court-fees is governed by section 7, paragraph (v) (c) of the Court Fees Act and is not to be arrived at either for the purpose of court-fees or for jurisdiction by the artificial 30 times *jama* rule, *Musst Bhag Bhari* v *Jowahir Singh*, 25 Ind. Cas. 545: 71 P R 1914: 241 P.L.R. 1914: 155 P.W.R. 1914

A fruit garden would be a "garden" even though the land is assessed with revenue, *Siri Dhar* v *Amar Nath*, 34 P W R 1908 61 P L R 1908 146 P R 1908

A suit for a parcel of land coming within the meaning of the expression "garden" requires court-fees as provided in sec 7, paragraph (v), clause (e) of the Court Fees Act although the land may be assessed for Government revenue, *Hakim Bibi* v *Mir Ahmad*, 24 S L R 24 117 I C 781 · 1930 A I R 15 (Sind).

Trees—The trees standing on specific items claimed in the plant need not be separately valued They are included in the valuation of the item, *Subramania Ayyar* v *Rama Ayyar and others*, 105 I C 881 1927 A I R 1002 (Mad) 54 M L J 67. 27 L W 489

PARAGRAPH VI.

Valuation.—The valuation is to be computed in accordance with paragraph (v) of this section, *Sunder Singh* v *Dhian Singh*, 15 P R 1919.

The valuation of a suit for pre-emption of land of the description falling under section 7, v (d) of the Court Fees Act, the valuation for court-fees and jurisdiction is to be determined with reference to the market value of the land at the date of sale and not at the date of institution of suit (The cases of *Sundar Das* v *Sham Singh*, 74 P R. 1875; *Fazl* v *Godar Khan*, 161 P R 1883 dist on the ground that in those cases the claim for value of improvement had to be considered and the pre-emptor had to pay the value of the improvements in addition to the value of the property sold at the time of sale), *Sher Muhammad* v *Ahmad Said and others*, 69 Ind. Cas. 650 · (1924) A I R 380 (Lahore)

The valuation of a suit to enforce a right to pre-empt is, in accordance with section 14 of the Madras Civil Courts Act, that fixed in the manner provided by sec 7 (v) of the Court Fees Act, *Narayan Nair* v. *Cheri Katiri Kutty*, 34 M.L J. 397. 45 Ind. Cas. 89.

Valuation for the purpose of jurisdiction—In a pre-emption suit, the subject-matter is the right of pre-emption, the value of which, and not that of the property itself, determines the question of jurisdiction under section 20, Act IV of 1871 (Bengal Civil Courts Act), *Nanu Singh* v. *Rash Behari Singh*, 13 Cal 255.

Valuation for the purpose of court-fee—"The bill, as first amended, imposed a fixed charge of Rs 10 on suits relating to rights of pre-emption The effect of that provision would be

to reverse the existing practice, under which such suits were assessed according to the value of the property regarding which a right of pre-emption was claimed Further consideration of the matter had led to the conclusion that this practice was in accordance with the principle adopted throughout the Bill; that the valuation of the suits would be regulated by the value of the subject-matter actually in dispute, and should therefore be maintained In the cases referred to, the subject-matter was in fact the possession of the property which the litigants claimed a right to purchase, and the application of the above-mentioned principle to such cases was in no way barred or affected by the circumstances that one or other of the disputing parties had to pay a certain amount to a third person as a preliminary condition to obtaining the actual possession of the property to which the suit has reference" *Gazette of India, Supplement*, dated 12th March, 1870

In a suit for pre-emption in respect of separate plots of land, which did not constitute any definite portion of a distinct revenue-paying area, and were not themselves separately assessed with revenue, the court-fee should be paid on the market value of the land in suit and not as the case where the suit is for a definite fractional share, on five times the Government-revenue. See *Government of India Notification, dated 10th September, 1889 No 4650, Clause 18 in the Appendix*

In a suit for pre-emption the court-fee payable is to be calculated on ten times the land revenue assessed on the land and has no connection with the sale price of the land or any encumbrance thereon, *Chandji Ram and others* v *Ram Sukh and others*, 1933 A I R 767 (Lah): 35 P L R 26· 147 I C. 29.

Pre-emption in respect of a revenue paying estate—For the purpose of court-fees a suit for pre-emption in respect of a sale of land paying revenue to Government falls under section 7 (vi) of the Court Fees Act, *Sunder Singh* v *Dhian Singh*, 15 P.R. 1919: 43 P.L R 1919: 49 Ind Cas 358

The principle seems to be that when the suit is for a definite share, say a ¼th or 1/5th of a separately assessed revenue paying estate, the court-fee may be paid on five times the revenue assessed on that part but if the suit be for distinct plots and not for a fractional part then the court-fee must be paid on the market value, *Reference under the Court Fees Act*, 1870· 16 All 493: 14 A W.N 174. Whether the plaintiff sued for pre-emption of shares of two villages out of a large number sold in one and the same transaction, the plaint is properly stamped if the court-fees paid are calculated on five times the aggregate amount of the Government revenue payable for each of the two villages, *Durga Prosad* v. *Purandar Singh*, 27 All. 186· 24 All W N. 210. See also the cases of *Chamaili Rani*

v. *Ram Dei*, 1 All 552; *Mulchand* v. *Shib Charan Lal*, 2 All 676, *Sukru* v *Tufazzul Hossein Khan*, 16 All 401 In a suit for pre-emption, the court-fees are to be calculated on the market value of land under paragraph V (d) of section 7 unless the suit be for a definite share of an estate paying revenue to Government or is recorded in the Collector's Register as separately assessed, *Musst Jian* v *Musst Nadir Nishan*, 6 P R 1883 There is no provision in the Court Fees Act for the valuation of the fractional part of a holding which is recorded in the Collector's Register as separately assessed with land revenue, *Haidar Ali* v *Sandha*, 102 P R. 1880.

Pre-emption of land not forming a definite share of a revenue paying estate—In a suit for pre-emption in respect of separate plots of land which is not a definite share of the revenue paying estate and were not in themselves separately assessed with revenue, the court-fee should be assessed on the market value of the property, *Baijiu* v *Mir*, (1894) 14 A W N 174 16 All 493 See also *Salamat Ali* v *Nur Mahamad Khan and others*, 1933 A I R 533 (Oudh) 10 O W N 1100 147 I C 852

It is the duty of the *Munsarim* to see that where pre-emption of certain land out of a larger one is sought, that the plot in dispute is a definite share of the whole as recorded in the Collector's Register or itself is separately assessed with Revenue as under section 7, v (b), *Hasibunnissa* v *Ghafurullah Khan* 29 All. 382: (1907) 27 A W N 110 4 A L J 363

Garden—In a suit to pre-empt a garden with a house and out-houses, the High Court held that the term "garden" includes a fruit garden though the land might have been assessed to land revenue, and that the value of a suit for possession of such garden for the purposes of the Court Fees Act must be assessed at the market value of the garden *Behari Lal* v *Nand Lal*, 68 Ind Cas 345 2 L L J 762 approving *Musst Bhagbhari* v *Jawahir Singh*, 71 P R 1914 25 Ind Cas 545

Indigo factory—A claim, therefore, for pre-emption of an indigo factory, although the site of the factory may be land paying revenue to Government must be valued and the Court fees paid thereon according to the value of the buildings constituting the factory and not according to the value of the site Such buildings as constitute the factory would fall within the meaning of the term "houses" as used in the Court Fees Act, *Durga Singh* v *Bisheshar Dayal*, 24 All 218 22 A W N 27

Mortgage.—This paragraph applies even if the land is subject to a usufructuary mortgage and immediate possession cannot be obtained or is not sought *Dewan Singh* v. *Bharat Singh*, 32 All 19 F B 6 A L J 905 3 Ind Cas 562.

Transfer of equity of redemption.—In a suit for pre-emption

on the transfer of equity of redemption of a house, the court-fee to be paid is to be calculated on the market value of the house which is the subject-matter of the mortgage, *Ghasita Mal v Kanshi Ram*, 123 P.L.R 1903

In case of deficiency, Court to give time.—In a pre-emption suit when the plaint is insufficiently stamped the Court must give time to make good the deficiency under Order 7, Rule 11, C P. C, *Jiwan Das v Khusabi Ram*, 27 P L R. 1917: 25 P W R 1917. 39 Ind Cas 766

As to appeals.—See *Hafiz Ahmad v Sobha Ram*, 6 All. 488: 3 All W N 179—where the defendants appealed on the ground that they are entitled to a larger amount and that the plaintiffs have estopped themselves by refusing to purchase the same The High Court, at page 490 of the report, said, "We do not agree that the nature of suit has changed in appeal, on the contrary, the subject-matter of the dispute between the parties was the right of pre-emption, the value of which was to be determined in the manner directed by section 7, paragraph (vi) of the Court Fees Act We are of opinion that where an appeal is preferred in a suit for pre-emption, on the ground that the right to pre-empt has or has not been established, as the case may be, no matter what other pleas may be taken, the value of the subject-matter in dispute, for the purposes of the Court Fees Act, must be determined as in terms provided in paragraph (vi) of *section 7 of the Act* But *when the question* in appeal relates solely to the amount to be paid by the pre-emptor, then we think that it should be calculated *ad valorem* on the difference between the amounts alleged as sale price on the one side and the other" See also *Mathura Prasad v. Karam Singh*, 6 O W N 276. 177 I C 480 1929 A I.R 240 (Oudh)

A memorandum of appeal against a decree in a suit for pre-emption of an estate assessed to revenue, where the appellant seeks to set aside the whole decree or a reduction of the amount payable, is to be stamped with court-fees assessed on ten times the annual revenue and not on the amount by which the pre-emption money is sought to be reduced, *Surain Singh v. Sundar Singh and others*, 120 I C. 532: 1929 A I.R. 879 (Lah).

The vendee who appeals against the decree in a suit for pre-emption, is entitled to pay court-fees on ten times the amount of revenue assessed on the land, although his real motive may be to increase the value and the court-fees payable on the difference between the value claimed and the value allowed is far higher than the court-fees payable on ten times the revenue asessed The High Court said: "It is an anomaly in the law relating to court-fees that a person who appeals only

against a part of the decree should pay more court-fees than the one who appeals against the whole of it But a litigant is entitled to appeal against the whole of a decree though he intends to attack only a part of it," *Nazar Muhammad* v. *Kaluram and others*, 9 Lah 563. 113 I C 538. 1929 A I R 190 (Lah.).

If the vendees appellants in appeal contest the right of the pre-emptors to sue for pre-emption and also claim the balance of the purchase money which has not been allowed to them, the stamp payable on the memorandum of appeal is the stamp originally payable by the pre-emptors, *i e*, on ten times the land revenue but if the appeal related to the amount of purchase money only, then *ad valorem* court-fees on the amount in dispute would have been payable, *Harichand* v. *Attar Singh*, 131 I C 751. 1931 A I R 490 (Lah) 1931 I R 511 (Lah) See also *Ram Labhaya* v *Vaid Prakash*, 1934 A I R 424 (Lah).

PARAGRAPH VIII.

The plaintiff sued to remove an attachment placed by the Collector of Thana on a cocoanut garden in Salsette in order to levy a fine of Rs 2,340. The Bombay High Court said at page 357 "The word 'value' in the last clause must be construed in the same way as in the previous clauses of the same section, and therefore, in case of land held on assessment for a period not exceeding thirty years, and paying the full assessment to Government (which is the present case), the value must be deemed to be sum equal to five times the survey assessment. The meaning of clause (viii) evidently is that a person suing to set aside an attachment on land shall in no case be called upon to pay a higher fee than he would have to pay if he were suing for possession of the land" The word "Government land" explained *Collector of Thana* v *Dadabhai Bomanji*, 1 Bom 352, but in *Daya Chand Nemchand* v *Hemchand Dharam Chand*, 4 Bom 515 F B., it was held that a plaint in a suit to restore an attachment of a house which has been reversed at the instance of an intervenient is to be stamped with court-fee of Rupees ten only

The valuation for stamp duty of a suit brought by trustees to set aside an attachment should be calculated on the value of the lien claimed by the judgment creditor in the case of an assignment by insolvent for the benefit of his creditors, *Cecil Stephenson* v *Baumgartner*, 3 Agra 104 Where the suit is for a declaration that a certain property valued at Rupees 400 is not to be sold in execution of the plaintiff's decree for Rupees 1,500 the court-fee payable is to be calculated on the value of the property and not on the value of the decree, *Durga Prosad* v. *Rachla Koer*, 9 All. 140. When the only parties to a suit are the execution creditor or his representative on one-

side and the claimant objector or his representative on the other, and the sole question between them is whether the property attached in execution of the decree is or is not liable to be sold in execution of the decree then the value means the value of the subject matter of suit, *i e*, the value of the property when the value of the decree exceeds the value of the proprty. But if the suit be under section 283, C P C. then the valuation for the jurisdiction within the meaning of Civil Courts Act (xii of 1887) must be the value of the property attached whatever may be the value of the decree sought to be executed, *Dwarka Das* v *Kameshar Prosad*, 17 All 69 and the cases cited therein. See also *Narayana Singh* v. *Ayyasamy Reddi*, 1914 M W.N. 910: 29 M L J. 728: 27 I.C 396

Suit to set aside an execution sale—A suit to set aside a sale on the ground that the attachment is not binding is virtually a suit to set aside an attachment and the court-fee is to be paid on the value of the land or the value of the decree whichever is less, *Gangadhar Aiyar* v *Vela Chetty*, 14 M L.J. 144

PARAGRAPH IX.

Application.—This paragraph applies only to suits and not to appeals, *Nepal Rai* v *Debi Prosad*, 27 All 477, *infra* *In the matter of Mahadeo Prosad* v *Gorakh Singh*, 30 All 547, *infra*; *Raghubir Prosad* v *Sankar Baksh Singh*, 36 All. 40, *infra* *Reference under Court Fees Act*, 29 Mad 367, *infra* But where the sole question in appeal is the right to redeem, the court-fees payable, are to be calculated under section 7, paragraph (ix) of the Court Fees Act, *Dhiraj Singh* v. *Rajaram*, 6 N.L R. 164 *Gumani* v. *Banwari*, 22 O C. 289 · 54 Ind Cas 733; *Sekharan Nair* v. *Eacharan Nair*, 20 M L J 120 3 Ind Cas 459. See also *Karaman* v *Norman Cockell*, 1 C W N 670

Subject-matter of suit.—The subject-matter of the suit is the amount of the mortgage money and not the market value of the lands in suit, *Kubair Singh* v *Atma Ram*, 5 All. 332; *Kedar Singh* v. *Matabadal Singh*, 31 All. 44: 28 All. W N. 296: 5 All. L.J. 713: 1 Ind Cas 704, *Reference under the Court Fees Act*, 5 Mad 288; *Reference under the Court Fees Act*, 14 Mad. 480; *Jallaldeen* v. *Vijoyasami*, 39 Mad. 447; *Mandoth* v. *Puthanpurayil*, 15 Ind Cas 587, *Rupchand Khemchand* v. *Balvant Narayan*, 11 Bom. 591; *Muhammad Khan* v. *Ashak Muhammad Khan*, 106 P R. 1895 F.B ; *Amrita Bin Bapuji* v. *Naru Bin Gopalji Shamji*, 13 Bom. 489, where it was held that if the mortgage is denied and the mortgagee does not say what is due, then the amount found to be due at the date of suit is the subject-matter of suit.

In all suits within paragraph ix of sec. 7, the principal amount secured by the instrument of mortgage is the determining factor, *Sheoram Singh* v. *Barkan Singh*, 8 O.W N. 536: 14 O L J. 365: 134 I.C. 597: 1931 A I R 366 (Oudh).

Payments are not to be deducted—In a suit for redemption against a mortgagee in possession, where the mortgagee has not paid rent due under the demise and the plaintiff asks for an account in taking which the arrears of rent should be deducted from the amount to be found due under the mortgage, *held* that the court-fees should be computed according to the principal amount expressed to be secured by the instrument of mortgage, *Eacharan Pattar* v *Appu Pattar*, 19 Mad 16, *Konna Panikar* v *Karunakara*, 16 Mad 328

Improvements.—Where an instrument of mortgage does not expressly secure the amount to be allowed for improvements on redemption of the mortgage, the value of the improvements is not to be taken into account in ascertaining the subject-matter of suit as under paragraph (ix) of section 7 of the Court Fees Act, the subject-matter is the charge and not the value of the land mortgaged By custom of the country, in *Kanom* demises the value of improvements are payable Therefore, for valuation for the purposes of jurisdiction of the suit for redemption the value must include the value of improvements, *Zamorin of Calicut* v *Narayana*, 5 Mad 284 F B See also *Govindan Nayar* v *K Ithalithy*, 50 M L J 493· 1926 A I R 764 (Mad)

Suit for recovery of mortgaged property—A suit for recovery of property mortgaged from a mortgagee is one for redemption and the suit comes under section 7, paragraph (ix), when one of the questions at issue is whether the mortgage money is paid off, and if not what amount is remaining due, *Maruti* v *Sripati*, 1889 P J p 58 See also *Karaman* v *Norman Cockell*, 1 C W N. 670.

Redemption.—In a suit for redemption of a *kanom* (which is not only a mortgage but also a lease) the plaint is to be stamped with court-fees according to the *Kanom* debt as it originally stood, *Reference under the Court Fees Act*, 14 Mad 480. A suit for redemption of a *kanom* and *Puran Kardam* is a suit for redemption and the court-fees are payable *ad valorem* on the principal amount secured by the instrument of mortgage, *Sreedhar Nambudri* v *Peramba Nair*, 1925 M.W N. 747: 1925 A I R 1254 (Mad)· 22 L W 408: 91 I C. 81.

In a suit for redemption the determining factor in calculating court-fees is the principal amount secured by the instrument of mortgage A suit for possession against a prior mortgagee in possession for recovery of the land mortgaged by a sub-

side and the claimant objector or his representative on the other and the sole question between them is whether the property attached in execution of the decree is or is not liable to be sold in execution of the decree then the value means the value of the subject matter of suit, *i.e*, the value of the property when the value of the decree exceeds the value of the proprty. But if the suit be under section 283, C P. C. then the valuation for the jurisdiction within the meaning of Civil Courts Act (xii of 1887) must be the value of the property attached whatever may be the value of the decree sought to be executed, *Dwarka Das* v *Kameshar Prosad*, 17 All 69 and the cases cited therein See also *Narayana Singh* v. *Ayyasamy Reddi*, 1914 M.W.N. 910: 29 M.L.J. 728 27 I.C 396.

Suit to set aside an execution sale—A suit to set aside a sale on the ground that the attachment is not binding is virtually a suit to set aside an attachment and the court-fee is to be paid on the value of the land or the value of the decree whichever is less, *Gangadhar Aiyar* v. *Vela Chetty*, 14 M.L J. 144

PARAGRAPH IX.

Application.—This paragraph applies only to suits and not to appeals, *Nepal Rai* v. *Debi Prosad*, 27 All. 477, *infra* *In the matter of Mahadeo Prosad* v *Gorakh Singh*, 30 All 547, *infra*; *Raghubir Prosad* v *Sankar Baksh Singh*, 36 All 40, *infra* *Reference under Court Fees Act*, 29 Mad. 367, *infra* But where the sole question in appeal is the right to redeem, the court-fees payable, are to be calculated under section 7, paragraph (ix) of the Court Fees Act, *Dhiraj Singh* v. *Rajaram*, 6 N.L R. 164; *Gumani* v. *Banwari*, 22 O C 289. 54 Ind. Cas. 733; *Sekharan Nair* v *Eacharan Nair*, 20 M L J. 120· 3 Ind Cas. 459. See also *Karaman* v *Norman Cockell*, 1 C W N. 670

Subject-matter of suit.—The subject-matter of the suit is the amount of the mortgage money and not the market value of the lands in suit, *Kubair Singh* v *Atma Ram*, 5 All. 332, *Kedar Singh* v. *Matabadal Singh*, 31 All. 44: 28 All. W.N. 296: 5 All L J. 713: 1 Ind Cas. 704; *Reference under the Court Fees Act*, 5 Mad. 288; *Reference under the Court Fees Act*, 14 Mad. 480; *Jallaldeen* v. *Vijoyasami*, 39 Mad. 447; *Mandoth* v. *Puthanpurayil*, 15 Ind. Cas. 587; *Rupchand Khemchand* v. *Balvant Narayan*, 11 Bom. 591; *Muhammad Khan* v. *Ashak Muhammad Khan*, 106 P.R. 1895 F.B.; *Amrita Bin Bapuji* v. *Naru Bin Gopalji Shamji*, 13 Bom. 489, where it was held that if the mortgage is denied and the mortgagee does not say what is due, then the amount found to be due at the date of suit is the subject-matter of suit.

Reference to title.—The court-fee payable by the plaintiff in a suit to redeem a *kanom* mortgage, should be in accordance with the provisions of section 7, clause (ix) of the Court Fees Act. The fact that the plaintiff refers to his title does not make it obligatory on him to pay any additional court-fee, the question litigated being the right to redeem, *Kavalapara Moopli Nair* v *Ammalam Amma*, 1926 M W N 324 95 I C 26: 23 L W. 738 1926 A I R 667 (Madras)

Mortgage with a clause of sale—In suits for redemption of mortgages with a clause of conditional sale, if the amount due upon the mortgage be unknown the plaint is to be stamped with court-fees calculated on the amount of mortgage, even though the defendant claims that the lands have become his absolute property, *Ramchandra* v *Janardan*, 14 Bom 19

Redemption after taking accounts—Where the mortgagor also prays for payment to him, after taking accounts, and after discharge of mortgage debt, of the amount found due to him, then the plaintiff must state the amount due to him and pay additional court-fees on the plaint, *Kodi Venkatappa Row* v *Barnala Suryonarayana*, 12 M L T. 493· 17 Ind Cas 442, *Vasudeva* v *Madhava*, 16 Mad 326

The vaule of a suit to redeem a usufructuary mortgage for the purposes of jurisdiction is the principal sum expressed to be secured by the instrument, although there may be a claim relating to excess realisation by the mortgagee of profits of the property as, under section 76, cl (h) of the Transfer of Property Act, the mortgagee is bound to repay an excess amount realised by him Section 17 of the Court Fees Act is not applicable to a suit unless the suit embraces two or more "distinct causes of action" and consequently is not applicable to a case of redemption by a usufructuary mortgagor when excess realization is also claimed by him, *Seth Gopi Kishen* v. *Sorabjee*, 68 Ind. Cas. 226: 1922 A I R. 259 (Nagpore).

Where in a suit for redemption, a definite amount is claimed against mortgagee in possession, the court-fee payable is to be calculated on the principal amount of mortgage money secured, and not on the surplus profits claimed, *Daulatram* v. *Gulab Chand and another*, 76 Ind Cas 131: 1924 A.I.R 346 (Nag.)

Redemption and Mesne Profits—Where the suit is for redemption as well as for surplus mesne profits realized by the defendant—mortgagee in possession, the plaint is to be stamped with a court-fee calculated on the principal amount secured by the instrument of mortgage only, *Chhidu Singh and other* v. *Jhanjhan Singh and other*, 45 All 154: 79 I C. 303: 1923 A.I.R. 261 (All); *Abdul Aziz* v. *Rahamatullah*, 1933 A I.R. 155 (Lah.).

In a suit for redemption with a claim for surplus profits,

the court-fees are payable *ad valorem* on the amount of principal money expressed to be secured by the instrument of mortgage as the surplus will be awarded as a result of the accounting under Order 34, rule 7 of the Code of Civil Procedure and consequently not separately chargeable with court-fees, *Musst Wajdi Begum* v. *Abdul Gani*, 24 N L R 197: 113 I.C 34: 1929 A I R 1 (Nag).

A suit for redemption of a usufructuary mortgage plus claim for surplus mesne profits, is a suit for redemption and the court-fees are payable under sec 7 (ix) of the Court Fees Act on the principal amount secured by the instrument of mortgage and no court-fees on surplus mesne profits need be paid in addition, *G Pothanna* v *Satyanandacharlu*, 60 M.L J. 698: 33 L W 785. 132 I C 317. 1931 A I R 479 (Mad.): 1931 I R 669 (Mad), but in *Ram Chand* v *Bhagwan Das*, 1935 A I R. 8 (Pesh). 154 I C 460 the Peshwar Court held that court-fees are payable on each issue in a claim for redemption and mesne profits. (This is wrong as the claim for mesne profits does not form a separate cause of action as regards court-fees.)

Redemption and recovery of Arrears of Rent.—But where the suit is to redeem and to recover arrears of rent, these are really two distinct causes of action, the court-fee is to be computed on the arrears of rent and the principal amount of *Kanom* debt as it did not appear that the claim of rent was intended to be set off against mortgage debt, *Rama Varmah Raja* v *Kadar*, 16 Mad 415 (418) In a suit by the plaintiff to redeem the *Kanom*, and to recover the arrears of rent, it was held that for the purpose of determining the jurisdiction of the Court of appeal the value of the subject-matter of suit was the aggregate value *of the two heads of relief*, *Konna Panikar* v. *Karunakara*, 16 Mad. 328

Valuation for jurisdiction—According to section 8 of the Suits Valuation Act (Act VII of 1887) the valuation for the purpose of jurisdiction of suits falling under this paragraph and their valuation for the purpose of determining the court-fees payable, may be different.

The valuation of suit for redemption for purposes of jurisdiction is the amount remaining due on the mortgage or claimed on it by the mortgagee. It is that amount and the right connected with it, which is the usual subject of contention in a suit for redemption, *Rupchand Khemchand* v. *Balwant Narayan*, 11 Bom. 591; followed in *Amrita Bin Bapuji* v. *Naru Bin Gopalji*, 13 Bom 489, in which it was held "that where the mortgage itself is denied and the mortgagee does not say what he claims in respect of the mortgage debt, the amount found to be remaining due on the mortgage, if any amount was due at that time, when the suit was filed, would represent the true

valuation of the subject-matter of suit." Where the plaintiff sought redemption on payment of Rs 266-0-0 but mentioned the sum of Rs 5,257-0-0 as value for jurisdiction, *held* that the value for the purpose of jurisdiction and court-fees is the amount in lieu of which redemption is sought and the pleader's fees are to be calculated on that basis, *Monohar Lal* v. *Khusi Shah*, 61 P.W.R. 1917.

The cases of *Kedar Nath* v *Matabadal*, (31 All. 44) and *Jallaldeen* v *Vijayasami*, (39 Mad 447) were doubted in *Saroda Sundari* v *Akramannessa*, 51 Cal 737: 78 I C 147 28 C W N 710 (712): 1924 A I R. 783 (Cal) where the Court held that valuation for purposes of jurisdiction of a suit for redemption is not the amount of the principal mortgage money, but on the amount ultimately found to be due

The valuation for the purpose of jurisdiction is the amount secured by the instrument of mortgage, *Sreedhar Nambudri* v. *Peramba Nair*, 1925 M.W N 747 1925 A.I R 1254 (Mad). 22 L W 408 91 I C 81 See also *Grandhi Pothanna* v. *Simhadri Satyanada Charyulu*, 132 I C 317. 1931 A I R 479 (Mad)

The value of a suit for redemption plus damages for the purpose of jurisdiction is the *Kanom* amount alone and not that amount plus damages claimed, *Gopala Memon* v *K. V Raman Memon*, 1932 M W N 53. 1932 A I R 217 (Mad) 35 L W. 64: 138 I C 136

The valuation of a suit for redemption where surplus profits are also claimed, is the amount of mortgage money expressed in the deed of mortgage, *Musst Wajdi Begum* v. *Abdul Gani*, 24 N L R 197 113 I C 34 1929 A I R 1 (Nag): 11 N.L J. 232

The valuation of a suit to redeem a usufructuary mortgage and for recovery of surplus profits of the mortgaged property, is the principal amount of mortgage money both for the purpose of court-fees and for jurisdiction, *Mahantha Long Singh* v. *Bishun Lall Singh*, 1933 A.I.R. 625 (Patna)

Appeals.—*Allahabad High Court*—Where a mortgagor claims to redeem alleging that the whole of the mortgage debt has been satisfied, but the Court granted a decree for redemption on payment of a certain sum, *held*, on appeal by the mortgagor, that the memorandum of appeal should be stamped under this section, according to the principal amount secured by the instrument of mortgage and not on the difference between the sum awarded and the sum admitted by the appellant to be due; but where the mortgagee is the appellant, the court-fees are to be calculated on the difference between the amount admitted and the amount ordered to be paid by the mortgagor, *Pirbhu Narain Singh* v. *Sita Ram*, 13 All. 94: (1890) 10 All.W.N

23, but in later cases this view has been dissented from. Section 7, paragraph (ix) applies only to suits and not to appeals. Therefore, the court-fees to be paid are to be calculated *ad valorem* on the subject-matter of appeal and not on the sum secured by the instrument of mortgage, *Nepal Rai* v. *Debi Prosad*, 27 All 447: 25 All W N. 40: 2 All.L.J. 105; followed in *Mahadeo Prosad* v *Gorakh*, 30 All 457: 20 All W N. 247: 5 All L J. 531, where the suit was on the ground that the mortgage money has been satisfied out of the proceeds and nothing remained due and that 4 annas and not 5 annas 4 pies share only has been mortgaged. The criterion laid down in section 7, paragraph (ix) of the Court Fees Act, 1870, for determining the court-fees payable in respect of a suit for redemption or foreclosure does not apply to appeals in such suits. In case of appeals or cross objections in suits for redemption or foreclosure and in all cases in which the amount declared by the Court to be due at the date of the decree can be ascertained by reference to the judgment and the decree, the subject-matter is the amount at which the appeal or cross objection ought to be valued and future interest should not be taken into account, *Raghubir Prasad* v *Shankar Baksh Singh*, 36 All 40: 11 A L J. 1016: 21 I C 723; modifying *Baldeo Singh* v *Kalka Prosad*, 35 All 94 See also *Lalta Prasad* v *Sheoraj Singh*, (1917) 39 All 452: 15 A.L J 464: 41 I C 346; *Prag* v. *Bhagwan Din and others*, 23 A L J 863: 47 All 926: 1925 A.I R. 734 (All): 88 I C 888

Note—But it does not appear why the court-fees should be paid *ad valorem* on the market value on a memorandum of appeal although the subject-matter of appeal may still be a claim to redeem The wording of Sch. I, Art. 1 of the Court Fees Act does not justify the conclusion

Bombay High Court—Where the money secured amounted to Rs 1,152-15-4 and the Court in decreeing the redemption suit against the defendants ordered Rs 568-9-8 to be paid to Umarkhan and Rs 584-5-8 to More and each of the defendants filed separate appeals and each claimed that larger amounts are due, *held* that each of the memorandum of appeals must be stamped with court-fees according to section 7, paragraph (ix) of the Court Fees Act, *Umarkhan* v *Mahomed Khan*, 10 Bom 41; *Raj Gopal* v. *Ram Krishna*, 10 Bom. 44

Where the appeal in a redemption suit relates only to an item in the accounts, the memorandum of appeal need only be stamped as if the whole suit was to recover that amount. *Fakir Mahomed* v. *Manakasajishet*, (1883) P.J. 39. Where the principal amount is Rs. 375 and on the contention of the mortgagee defendant the Court found that Rs. 1,812 is due to the mortgagee and the mortgagee appealed on the ground that the accounts were

not properly taken and valued the appeal at Rs 375 the mortgage amount, held that the appeal was properly valued, *Gopal* v. *Gangaram*, 1891 P J 218.

Lahore High Court—A memorandum of appeal against a decree for redemption on payment of a certain sum is to be stamped with court-fees *ad valorem* on the amount of money expressed to be secured by the instrument, *Fatteh Singh v Babu Ram*, 3 Lah L J 156 In a suit for redemption, the Court of first instance found that the amount payable on redemption was Rs 570, the Appellate Court reduced the sum to Rs 190 The mortgagee in further appeal prayed that this amount be raised to Rs 1,190. *Held*, that under Schedule I, Art I of the Court Fees Act, the court-fees payable on the memorandum of further appeal should be calculated on Rs 1,000 the difference between Rs 190 and Rs 1,190 which is the value of the subject-matter in dispute in appeal, *Banwari Das* v *Nathu Shah*, 5 P R 1911: 48 P L R 1911: 59 P W R 1911: 9 Ind Cas. 676; *Lekhram* v. *Ramji Das*, 1 Lah 234: 57 I C 215 See also *Har Lal* v *Siri Ram*, 32 P L R 591· 134 I C 124: 1931 A I R. 633 (Lah) 1931 I R 892 (Lah), where it was held in addition that the subject-matter of a suit may a change in appeal, as in an appeal from a suit for redemption the only question may be the amount payable under the decree

Madras High Court—The provisions as to suits, by or against a mortgagee is section 7, paragraph (ix) of the Act are intended to apply to suits and not to cases of appeals therefrom, which latter are chargeable with court-fees on the subject-matter actually in dispute therein as provided for in Schedule I, Article I of the said Act as the word "suit" does not apply to appeals and the same rule should apply if the appeal be by a defendant, *Reference under the Court Fees Act*, 29 Mad 367: 16 M L J. 287; *Vasudeva* v. *Madhava*, 16 Mad 326

Where the defendant in appealing against the decree allowing redemption, contended that the plaintiff cannot redeem and if he be found to be so entitled, he can do so on payment of a larger amount, *held*, that the memorandum of appeal is to be stamped under section 7, paragraph (ix) according to the principal amount expressed to be secured by the instrument of mortgage and the court-fee is the same as that on the plaint If the question be as to the amount payable then only the case comes under Art. I, Schedule I of the Court Fees Act and the court-fees are payable on the amount in dispute In a redemption suit the subject-matter of the suit is the existence of the right to redeem, and any question as to the amount is only incidental to that right, *Sekharan Nair* v. *Eacharan Nair*, 6 M L T. 245: 20 M L J. 120: 3 Ind. Cas. 459.

Nagpore Court.—In *Vithoba* v. *Ramji*, 1931 A.I.R. 180 (Nag.) it was held that if in the appeal not only the right under the mortgage decree to foreclose or redeem be contested but the amount of the decree is disputed and the appellant seeks either to enhance or diminish that amount, then court-fees *ad valorem* on the amount by which the decree is sought to be enhanced or diminished must be paid.

Oudh Court—Court-fees on the memorandum of appeal should be computed *ad valorem* on the difference between the amount found to be payable by the Court below and the amount which the appellant claims to be payable in cases of dispute as to the amount payable, *Ram Adhin* v *Hanuman*, 9 O.C. 153, *Muhammad Hussain* v. *Syed Jahan Begam*, 2 O C 87: *Basudeo Ram* v. *Srikrishna Gir*, 13 O C 62 5 Ind Cas. 941; see also *Sangat Baksh Singh* v *Rawal Dijdeo Baksh Singh*, 25 O.C. 30: 67 Ind Cas 968: 1922 A I R. 82 (Oudh), *Gumani* v. *Banwari*, 22 O C 289 54 Ind Cas 733

If the amount declared by a Court to be due at the date *of the decree in a suit for redemption or foreclosure* can be ascertained by a reference to the judgment and the decree, then the appeal or cross objection should be valued at that sum and future interest is not to be taken into account, *Nirman Singh* v. *Shyam Narain*, 6 Luck 34 7 O W N 585 127 I.C. 32: 1930 A I R 329 (Oudh): 1930 I R 448 (Oudh).

If in an appeal from a decree in a foreclosure suit the amount of the decree is not disputed but the decree is challenged on the ground that the deed is bad for want of registration or that the deed was not executed for legal necessity, or that the suit is barred by limitation, or that the deed is not genuine or that the interest is penal, then *ad valorem* court-fees on the principal amount secured by the instrument of mortgage is sufficient, *Ram Sarup Singh* v *Gaya Prasad*, 8 O.W.N. 836: 134 I.C. 604: 1931 A.I R 353 (Oudh). 1931 I R 396 (Oudh).

Patna High Court—In case of appeals or cross objections arising out of suits for redemption or foreclosure, when the amount due can be ascertained by reference to the judgment and decree appealed from, it is that amount at which the appeal or cross objection is to be valued and future interest is not to be taken into account, *T. K. Rawlins* v *Lachmi Narain Jha*, 3 Pat.L.J. 443: 1918 Pat. C.W.N. 264: 44 I.C. 50.

Cross objection to reduce the amount decreed.—The party filing the memorandum of cross objection must pay court-fees calculated *ad valorem* on the sum by which he seeks to reduce the amount decreed, *Mansa Ram* v. *Umra*, 134 P.W.R. 1911: 213 P.L.R. 1911: 11 Ind. Cas. 198

Where no additional relief is claimed against mortgagee.—

Where the plaintiff merely seeks to redeem the property without asking for any additional relief against the mortgagee, then the suit falls under section 7, paragraph (ix) of the Court Fees Act, but if he prays that any amount that may be found due to him after taking accounts, and after the discharge of mortgage debt, be paid to him, then he must approximately state the amount so claimed and pay additional court-fees thereon, *Kodi Venkatappa* v *Barnala Surjanarayana*, 12 M L.T 493. 17 Ind Cas 442 (Madras).

Conditional sale.—*Suits to have conditional sales declared absolute*—The plaint in a suit to declare a conditional sale declared absolute is to be charged with court-fees calculated *ad valorem* under section 7, paragraph (ix), clause (iii) of the Court Fees Act, *Hazara Singh* v *Mahammad Khan*, 134 P L R 1901

A suit for possession of land by a mortgagee by conditional sale who claims to have foreclosed his mortgage under Regulation XVII of 1806, is a suit for possession of "land" within paragraph (v) of section 7 of the Court Fees Act and is not a suit by a mortgagee to foreclose his mortgage under paragraph (ix) of section 7 of the same Act, *Telu Mal* v *Lal Singh*, 20 P R 1893

A suit by a mortgagee to foreclose the mortgage or a suit by a mortgagee by conditional sale to have the sale declared absolute, falls under sec 7 (ix) of the Court Fees Act and the court-fee payable is to be calculated on the principal money expressed to be secured by the instrument of mortgage A suit by the mortgagee to recover possession of the property mortgaged under the terms of the deed of mortgage also falls under sec 7 (ix) of the Court Fees Act and court-fee is to be paid accordingly, *Hemnath* v *Wilayat Ahmad*, 6 O W N 491: 117 I C 766 1929 A I R. 321 (Oudh)

Foreclosure Suits.—*Allahabad*—Where in a foreclosure suit the plaintiff is ordered to redeem a prior mortgage on payment of Rs. 5,914-6-5 and the plaintiff appealed against that decree, *held* that the memorandum of appeal should be stamped *ad valorem* on the amount the plaintiff has been ordered to pay because he wants to get rid of the liability imposed upon him, *Baji Lal* v. *Goverdhan Singh*, 31 All. 265: 6 All L J 155: 1 Ind. Cas 1000; *Nepal Rai* v. *Debi*, (1907) 27 All.W N. 40

C P—In foreclosure suit, the plaintiff mortgagee obtained a decree under section 86 of the Transfer of Property Act declaring the amount due, under the mortgage. The defendant mortgagor appealed on the ground that so much is not due and that the amount ought to be reduced. *Held*, that the memorandum of appeal should be stamped with court-fees, calculated *ad valorem* under Schedule I, Art. I of the Court

Fees Act on the amount by which the amount fixed in the decree is sought to be reduced and not under section 7, paragraph (ix) of the Court Fees Act on the amount secured by the instrument of mortgage, *Onkar* v *Lakmichand*, (1907) 5 N L R 130 Similarly where the mortgagee-decree-holder appealed on the ground that the amount so decreed should be enhanced by Rs 8,902 which is also payable under the decree, *held* that court-fees *ad valorem* on the amount by which the decretal amount is sought to be enhanced are payable, *Basdeo* v. *Dayaram*, 11 N.L R 83 29 Ind Cas 609 But when the subject-matter of appeal is the right to foreclose, then the court-fees are payable on the amount secured by the instrument of mortgage, *Dhiraj Sing* v *Rajaram*, 6 N L R 164 F B

Appeal against final decree in a foreclosure suit.—The appeal against an order passed under Order 34, rule 3, C. P. C passed in a suit for foreclosure, is to be treated as an appeal from a decree and the memorandum of appeal is to be stamped with *ad valorem* court-fees, *Ramdhani* v *Chowdhury Magbul Ahmad Khan*, 18 O C 114

Appeal by purchaser of a portion of the property—Where the purchaser of the mortgaged property being the defendant in a suit for foreclosure, preferred an appeal against the decree for foreclosure made in the suit, the amount found due on the mortgage being over a lakh of rupees, to exonerate that property Held (for the purpose of calculating court-fees payable on the appeal) that the value of the property affected by the decree only is to be taken into account and as the appellant purchased the property at Rs 2,500 that is to be taken as the valuation for the purpose of court-fees, *Jagatdhar Narain* v. *Brown*, 33 Cal. 1133 · 10 C W N 1070: 4 C L J 121. See *contra*, *Mahadaji* v. *Balkrishna*, (1881) P J 106, where it was held that such cases come under section 7, paragraph (ix) of the Court Fees Act.

Further Charge.—In a case where A executed a usufructuary mortgage and after the death of A his widow executed two deeds of "further charge" and the reversioners wanted to redeem the mortgage by A, the trial Court held that the plaintiffs are also liable to pay the amount secured by the subsequent deeds of further charge. The plaintiffs appealed but paid court-fees on amount of the deed executed by A *Held*, there being no dispute as to the amount due on the subsequent deeds, the court-fees paid were sufficient, *Ram Phal* v *Deputy Commissioner of Bahraich*, 12 O.C 130 · 2 Ind. Cas. 600.

When the mortgagee defendant in a suit for redemption of a usufructuary mortgage set up a deed of further charge but the trial Court decreed the suit for redemption on payment of the

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increase the amount, *Lachman Singh* v *Bahadur Singh*, 16 O C 354.

PARAGRAPH X.—Specific Performance.

Note—As to contracts which cannot be specifically enforced, see section 21, Specific Relief Act

Scope—*Contract of Guarantee.*—Suits against defendants to specifically perform their contract of guarantee by causing restoration of village to plaintiffs, to do all acts necessary to give them full possesion and for compensation, are not suits for specific performance and are not provided for and do not come under section 7, paragraph (x) of the Court Fees Act but as suits for compensation such suits fall under section 7 (1) of the Court Fees Act, *Chunibai* v *The Secretary of State for India*, 1890 P J 204

Suit by a joint purchaser—Where the plaintiffs brought a suit for 3|11 share of two plots of land on the ground that it was agreed between the plaintiffs and the defendants that the lands should be purchased in partnership *Held*, that the suit did not fall under section 7 (x) of the Court Fees Act and cannot be maintained as the plaintiffs did not pay their share of the money, *Nanda Sing* v *Sunder Sing*, 97 P L R. 1901.

Suit for refund of purchase price—Where the plaintiff offers to perform his part, a suit for refund of purchase price is a suit for specific performance, *Bhashya Karlu* v *Andalammal*, (1918) M W N 896 See also *Lakshmi Ammal In re*, 1926 A I R 96 (Mad) 49 M L J 608· 1925 M.W N. 826: 91 Ind Cas 729 where the vendee sued to recover the amount paid and damages alleging that the sale is a fraudulent one.

Suit for possession by lessee—A suit for possession by the lessee of land comprised in a lease is not a suit for specific performance of the contract of lease, and the court-fee payable on the plaint is the same as in a suit for possession. But the memorandum of appeal must be stamped according to the value of the relief asked for, *Ghulam Sabir* v. *Narain Prosad*, 5 A.L J. 534: (1908) 28 A W N 201.

Clause (a).—Where the mother of a Hindu minor entered into a contract for sale of his land and the vendor sued for specific performance of the contract and for possession and it was found that the minor is bound by the contract; the suit having been dismissed by the trial Court, *held*, on appeal by the plaintiff that he must pay court-fees upon the prayer for

possession and a conditional decree was passed in his favour to take effect upon payment of the requisite court-fee, *Krishna Sami* v *Sundarappayyar*, 18 Mad 415. 5 M.L.J. 164.

Suits for specific performance and possession—Where the plaintiff asks for specific performance of a contract of sale and possession, *held*, that the suit is in substance one for possession of the property and ought to be valued under section 7 (v) of the Court Fees Act according to the value of the subject-matter of suit, and it was further held, that it was not necessary for their Lordships to hold that in cases of this description, the plaintiff must not only sue for specific performance of the contract and execution of the conveyance by the defendant but also for recovery of possession, *Madan Mohan Singh* v. *Gaja Prosad Singh*, 14 C L J 159. 11 Ind Cas 228. See also the cases cited therein and *Nathekhan* v. *Muhammad Khan*, 128 P W.R. 1918: 46 Ind. Cas 534.

A suit for specific performance of a contract and for possession is to be valued for the purpose of court-fees under sec. 7, paragraph (v) and not on the amount of consideration under sec 7, paragraph (x) of the Court Fees Act, *Ram Bahadur* v *Banwari Lal*, 118 I C 134: 1929 A.I R. 642 (Pat).

Where the plaintiff alleged that the defendants Nos. 2 and 3 having contracted to sell certain property to him, received part of the price, and thereafter sold the same property to defendant No 1 who had notice of the agreement with the plaintiffs, and they asked (1) that the defendants 2 and 3 might be compelled to complete the sale to the plaintiffs and (2) for possesion of the property. *Held*, that the suit is really one for specific performance of a contract and the court-fees thereon was assessable under section 7, clause (x) of the Court Fees Act 1870 Mr. Justice Tudball observed at pages 295, 296 of the report, "as stated by a Bench of this Court in *Mohiuddin Ahmed* v. *Majlis Rai*, 6 All. 231, the suit is in substance one for specific performance of a contract and falls *prima facie* under section 7 clause (x) of the Court Fees Act, 1870 I have no hesitation in accepting this as the true solution of the case for one simple reason, *viz*, when a vendor contracts to sell, he contracts as laid down in section 55 of the Transfer of Property Act, to execute a proper conveyance of the property to the buyer, and tender it to him for execution at a proper time and place on payment of the amount due in respect of the price. He also contracts to give the buyer or such person as he directs, such possession in the property as its nature admits. The plaintiffs in the present case, are clearly seeking to enforce the contract of sale and they also seek from the vendor to do that which he is bound to do under the contract, *i e*, to execute and register a sale deed and to hand over possession of the property. Th

suit is one in form and substance a suit for specific performance," *Nihal Singh* v. *Sewa Ram*, 38 All 292: 14 A L J. 434: 35 Ind. Cas. 275.

Where the defendant promised to transfer property in consideration of Rs 600 in cash and some lands belonging to the plaintiff, but failed to carry out his promise which compelled the plaintiff to bring a suit, the Lahore High Court on appeal held, "According to sub-clause (a) of section 7 (x), court-fees payable in suits for specific performance of a contract of sale will be levied according to the amount of consideration. The court-fees cannot be paid as if the suit was a suit for possession of land, *Kundun Lal* v *Anund Sarup*, 73 Ind Cas 709: 1923 A I R. 456 (Lahore). See *Gopal Das* v. *Parmanand*, 60 I.C. 512 (Lahore) where part of the consideration money was paid, but it was held that the suit was a suit for possession.

There may be a suit for specific performance of a contract of sale without a prayer for possession In such a case court-fees *ad valorem* on the valuation were held to be payable. (In this case the plaintiffs alleged that they are in possession and asked that the defendant may be ordered to (1) execute a conveyance, (2) to return the original deed and (3) register the deed), *Faquir Chand* v. *Ram Dutt*, I.L R. 5 Lahore 75: 80 I.C. 953: 1924 A I R 439 (Lah).

A suit to enforce specific performance of a contract to sell land and for possession of the property agreed to be sold is a suit for specific performance falling under sec. 7, cl (x) (a) of the Court Fees Act Such a suit is not a suit for possession falling under section 7, cl (v) (e), nor one embracing "two or more distinct subjects" within the meaning of section 17 of the Act. The delivery of possession is a part of specific performance of the contract of sale, unless the terms indicate that the vendor was not under an obligation to deliver possession, although the decree may have to be executed to obtain delivery of posses- [illegible] v. *Sivalingam Pillai and others*, [illegible] 924) A.I.R. 360 (M.); 18 L W. [illegible]

See also the case of *Narayana Kabirayan* v. *Kandasami Goundan*, 22 Mad 24, where it was held that the plaintiff in a suit for specific performance of an agreement to sell land must also ask for possession and a separate suit for possession does not lie. See also *Krishnammal* v. *Soundararaja Ayyar*, 38 Mad. 698

But see *contra*, *Nathu Valad Pandu* v. *Bhudhu Valad Bhika*, 18 Bom. 537. See also *Shib Kristo Dah* v. *Abdool Sobhan Chowdhury*, 15 W.R. 498; *Abhiram Das* v *Sriram Das*, 8 B.L R. 421; *Anderson, Wright & Co* v. *Kalagarla Surji Narain*, 12 Cal. 339 (346).

Clause (b).—Suit to recover possession of a date-garden, of which the plaintiff was in possession as a mortgagee, on the ground that he was ousted by the defendants, does not fall under sec 7 (x) (b) of the Court Fees Act but falls under section 7 (v) of the Court Fees Act, *Chela Mal* v. *Fazl Beg*, 33 P R 1880

Clause (c).—In a suit filed in a Sub-Judge's Court the plaintiff prayed that his *mourasi mokrari* right in certain lands be declared and a decree passed against the defendants directing them to grant him a lease, the yearly rent payable under which was to be Rs. 71 The plaintiff valued the suit for the purpose of jurisdiction at Rs 1,100, but gave no materials or data to support the valuation *Held*, that under the provisions of section 7, paragraph (x), clause (c) of the Court Fees Act and section 8 of the Suits Valuation Act, the suit should have been valued at Rs 71 for the purpose of court-fees and jurisdiction, and it ought to have been filed in the Munsiff's Court, and as title would accrue after execution of the deed, valuation cannot be made on that basis, *Port Canning and Land Improvement Co, Ltd* v *Roson Ali*, 17 C W N 16 15 Ind Cas 46 See also *Sailendra Nath Mitra* v *Ram Charan Pal*, 25 C.W.N. 768: 34 C L J 94 66 Ind Cas 268

Clause (d)—Award.—Where the suit was one for recovery of possesion of property or specific performance of an award, the court-fee payable is to be calculated on the value of the property in suit, *U Thi Ha* v *U Thudatthana*, U B R. 1909, 2nd quarter When an agreement to refer to arbitration was filed in Court and arbitrators were appointed, but after the award both parties objected on the ground of misconduct of the arbitrators, and one of the parties succeeded, whereupon the other party filed an appeal under section 104, C P. C. (Act V of 1908) *Held*, that this clause does not apply but court-fees were payable under Art. 17, clause (iv), second schedule of the Court Fees Act, *Ram Jawaya* v. *Devi Ditta Mal*, 117 P.R. 1916: 70 P.L.R. 1917: 107 P W R. 1916: 34 Ind Cas 192. See also cases under Art. 17, clause (iv), second schedule, *infra*, and under Art 11 of the second schedule to this Act

Valuation.—The valuation of a suit for specific performance for court-fees is to be assessed *ad valorem* on the amount of consideration and the valuation for jurisdiction shall be the same under section 8 of the Suits Valuation Act, *Saiyed Ashfaq Hussain* v. *Saiyed Bunyad Hussain and others*, 77 Ind. Cas 874: (1923) A.I.R. 252 (Oudh).

The proper valuation of a suit for specific performance of a contract for sale of land, is the price agreed upon to be paid, *Shiv Dial* v. *Shiv Ram Das*, 111 I C 72: 1928 A I.R. 635 (Lah.).

Under section 8 of the Suits Valuation Act, the value for the purpose of jurisdiction and court-fees must be the same except in cases coming under section 7 (x) (d) of this Act.

PARAGRAPH XI.

Application.—In a suit under sec. 95 of the Agra Tenancy Act, 1901, to declare the plaintiff's status as an occupancy tenant, the plaint or memorandum of appeal should bear a court-fee of eight annas as provided by Article 5 of Schedule II to the Court Fees Act; sec 7, clause (xi) of the Act does not apply to such a suit, *Ratan Singh* v *Khem Karan*, 40 All 358. 16 A.L J 117: 44 Ind Cas 608

A suit for assessment of rent implies that no rent was payable previously by the defendant and there being no rent previously payable the clause (xi) of sec 7 does not apply to such a suit, *Dhanukdhari Tewari* v *Mani Sonar*, 100 I C 913 1927 A I.R 123 (Patna). I L R 6 Pat 17. 8 P L T 365

Where in a suit a declaration of title is sought and also a relief against one of the defendants on the ground that he is a trespasser, the suit is not strictly within section 7, paragraph (xi) of the Court Fees Act, *Hira Lal Bannerjee* v *Surendra Nath Sarbonga and others*, 1926 A I R 504 (Cal): 91 I C 488

Valuation.—In the case of suits falling under paragraph (xi) of section 7 of the Court Fees Act the valuation for the purpose of court-fees must be the same as the valuation for the purpose of jurisdiction There is nothing to indicate that section 8 of the Suits Valuation Act should be read subject to the provisions of section 14, Madras Civil Courts Act, *Vannavalli Seshagiri Row* v *Narayan Swami Naidu*, 26 M L J 573 22 Ind Cas 374

The valuation of a suit or appeal for enhancement of rent of a tenure is to be computed on the annual amount to which the rent is sought to be enhanced minus the amount admitted or awarded in the lower Court, *Prasannadeb Raikat* v *Purna Chandra Shaha and others*, 61 Cal 513: 38 C W N 527: 152 I.C. 753: 1934 A I R 674 (Cal)

Clause (b)—Enhancement.—Note that the words used are 'to enhance the rent of a tenant having a right of occupancy' Compare this with clause (f) where this clause is absent A suit for increased rent for increased area found to be so on measurement is not a suit for enhancement of rent See *Ejel Mullick* v *Felai Mullick*, 21 C L.J. 309 (311); *Pratap Mahton* v. *Musst Wazirunnissa*, 4 Patna 604.

Valuation.—In a suit for arrears of rent and for enhancement of rent, the valuation for the purpose of jurisdiction and

court-fees should be the same, *Dhaturi Singh* v. *Kedar Nath Goenka*, 8 P L T 475.

Tenant having a right of occupancy—In *Prasannadeb Raikat's Case*, 38 C.W.N. 527: 61 Cal 513: 152 I.C. 753: 1934 A I R 674 (Cal) the Calcutta High Court held that the expression 'right of occupancy' does not include the rights of a tenure-holder and is to be understood in a general sense. See *Palaniappa Chetti* v. *Sillniavelu Servai*, (1907) 31 Mad 14: 17 M L J 478 where the Madras High Court held that words 'occupancy of land' seem properly to be applicable to the case of ryots

Clause (cc)—Scope.—Sec 7, clause (xi) (cc) is not confined to cases where the defendant is clearly estopped from denying the plaintiff's title If a landlord sues a tenant for possession of the immoveable property, the court-fee may be assessed under sec 7 (xi) (cc) of the Court Fees Act. The plea of the defendant that he is an occupancy raiyat, does not remove the suit from the category of sec 7, clause (xi) (cc) of the Court Fees Act, *Punyamurthulu Venkata Rattamma* v. *Ghalasani Sreeramulu*, 25 L W 76 52 M L J. 100: 99 I C. 981: 1927 A I R 331 (Mad) A suit for ejectment and a declaration that the plaintiff was absolute owner of the property in suit, is a suit for declaration with a consequential relief and comes under sec 7 (iv) (c) of the Court Fees Act and is outside the scope of sec 7 (xi) (cc) of the same Act, *Ramalinga Mudaliar* v. *Ramaswami Iyer*, 1929 M W N 239 29 L W 760: 1929 A.I.R 529 (Mad): 110 I C. 577 A suit based on alleged relationship of landlord and tenant comes within sec 7 (xi) (cc) of the Court Fees Act, *Sivasubramania Nadar* v. *Subramania Nadar*, 35 L.W. 393: 1932 A.I.R 409 (Mad.) but the suit in its inception must be suit of this description, *Haladhar* v. *Mangal Reza*, 34 C W.N. 217.

If an inamdar claims both *kudivaram* and *melavaram* rights and seeks to eject the tenants after notice by virtue of his *kudivaram* right, then the suit is one for declaration of his right with a consequential relief as the plaintiff seeks a declaration that he is entitled to the *kudivaram* right and prays for possession as a consequential relief; such a suit does not come under sec. 7 (xi) (cc) of the Court Fees Act, *In re Majumdar Sobhandri Rao Pantulu Garu and others*, 56 Mad 314: 63 M L J 759: 1932 M W.N. 1197: 36 L W. 701: 140 I C. 462: 1933 A I R 42 (Mad).

Question of title of plaintiff—The fact that the defendant denies the relationship of landlord and tenant does not alter the character of the suit and valuation for the purpose of jurisdiction and court-fees must be the same under section 8 of the Suits Valuation Act, *Ram Chand* v *Ram Sukh Das*, 27 P.R 1910: 210 P.L R 1910: 30 P.W.R. 1910: 5 Ind Cas. 910;

Govind Kumar Sur v *Mohini Mohan Sen,* 33 C.W.N. 769; but the title of plaintiff is not to be decided on payment of court-fees on only one year's rent, *Balasidhantam* v. *Perumal Chetti,* 27 M.L.J. 475: 27 I.C. 102 See also *Bapurao and others* v. *Narayan Keshav Ghande,* 103 I C 337: 1927 A.I R. 321 (Nagpur), *infra*

Ejectment of a tenant—A right of landlord to recover immoveable property from his tenant arises when the relationship of landlord and tenant has ceased between them and the tenant has lost the right to remain on the land; therefore the word tenant in sec 7 (xi) (cc) *means an ex-tenant, i e*, a person who was a tenant but has at the date of suit ceased to be A suit by landlord to eject a tenant after serving him with a notice to quit comes under sec. 7 (xi) (cc) of the Court Fees Act and should be valued and court-fees paid under that article, *Govinda Kumar Sur and others* v *Mohini Mohan Sen and others,* 57 Cal 349. 33 C W N 769: 1930 A I R 42 (Cal) 125 I C 726; *Mohan* v *Bhuteswar,* 83 I C 1 1925 A I R 142 (All)

When the plaintiff landlord sued the tenant for rent and the tenant set up a defence that the relationship of landlord and tenant never existed, the defence was upheld by Courts. The landlord plaintiff then sued to eject the tenant as trespasser, the High Court held that the suit to eject the tenant is really a suit for possession of the land from a trespasser and the plaint is to be stamped as in a suit for possession, *Govinda Ram Agarwala* v. *Dulu Pada Dutt and others,* 32 C W N 1113: 116 I.C 374: 1928 A I R 753 (Cal)

Suits to eject the tenant by the landlord are governed by section 7, clause (xi) (cc) of the Court Fees Act and are included in the provisions of section 8 of Suits Valuation Act (VII of 1887) which provides that the valuation of suits for the computation of court-fees and for the purpose of jurisdiction shall be the same The effect of the amendment of the Court Fees Act by Act VI of 1905 is to repeal by implication section 14 of the Madras Civil Courts Act (III of 1873) so far as suits falling under the newly added clause (xi) (cc) to section 7 of the Act of 1870 were concerned, and to apply to them the provisions of section 8 of the Suits Valuation Act. Although suits for recovery of immoveable property from tenants have not been expressly withdrawn from the operation of section 14 of the Madras Civil Courts Act, the effect of amendments of section 7 by adding to it clause (xi) (cc) is to bring such suits also under the operation of section 8 of the Suits Valuation Act and not under section 14 of the Madras Civil Courts Act, so that in the case of such suits the valuation for the purpose of jurisdiction is the same as that for court-fees, *Narayan Swami Naidu* v *Seshagiri Rao,* 39 Mad 873: 2 L.W. 1031: 29 M.L J.

572. 18 M.L.T 398: 31 Ind. Cas 104. See also *Pramatha* v *Amiruddi*, 24 C.W.N. 151: 55 I C 178, where it was held that if persons other than the tenants are parties to the suit the court-fees *ad valorem* on the valuation as for possession, are payable See also *Hira Lal Bannerjee* v *Surendra Nath Sarbanga*, 91 I C 488: 1926 A I R 504 (Cal); *Musst. Bhagobai Devisingh* v. *Shamlal Dwarkaprasad*, 1933 A.I R. 312 (Nag.).

Tenant—who is.—A suit to eject a *thicadar* after expiry of his lease falls within section 7 (xi) (cc) of the Court Fees Act All suits by landlord to recover possession of land from a tenant where the tenancy has terminated either by efflux of time or otherwise, come under section 7 (xi) (cc) of the Court Fees Act. The word "*tenant*" in clause (cc) includes a person to whom that description would apply immediately before the institution of the suit but whose tenancy has terminated entitling his landlord to eject him, *Ram Charan Singh* v *Sheo Dutta Singh*, I L R 2 Pat 260: 4 Pat L T 666 74 Ind Cas. 619: 1923 A I.R. 380 (Patna). See also *Sriram* v *Jagat Narain*, 93 I.C 291; *Ram Lal* v *Musst Bibi Salvia*, 1935 A I R. 90 (Patna); *Telenga Marandi Majhi* v *Chandra Mohan Singh*, 1933 A.I.R. 664 (Patna): 14 P L T 616 147 I C 1177; *Narayan Jha Naront* v *Jagni Prasad Jha*, 13 Patna 329· 1934 A I R. 184 (Pat.)· 15 P L T. 139

The words landlord and tenant must include ex-landlord and ex-tenant. An action by an ex-landlord against an ex-tenant might ordinarily be described as an action of the landlord against the tenant, *Karnani Industrial Bank* v. *Satya Niranjan Shaw*, L R. 55 I A 342 (350): 32 C.W.N 1093.

Tenant holding over—A suit for recovery of possession of land against a tenant who "*holds over*" comes under section 7 (xi) (cc) of the Court Fees Act, but if the tenant "holds over" *in defiance* of a written notice then he is a trespasser and court-fees as in a suit for possession are to be paid A tenant *holding* over is a tenant, who after his right to the occupation under a lawful title is at an end continues (having no title at all) in possession of the land without agreement or disagreement of the person in whom the right of possesion resides, *Narayan* v *Tukaram*, 74 Ind. Cas 93 (Nagpore): 1923 A.I.R. 310; *Champat* v. *Bolak Das*, 1925 A.I.R. 131 (Nag.): 20 N.L.R. 124: 80 I.C. 202 [discussed in *Vithaldas* v. *Ghulam Ahmad*, 23 N.L.R. 5: 99 I.C. 438: 1927 A I.R 156 (Nagpore)].

Son of the original tenant—A defendant (son of the tenant who was holding over) who paid rent after the demise of his father cannot be said to be a trespasser on the land against whom the plaintiff landlord has to proceed by way of getting his title established in a properly constituted suit. (The case was in respect of homestead land only and *ad valorem* court-fee was not demand-

ed), *Ashutosh Pramanic and another* v. *Jibandhan Ganguli*, 1933 A.I.R. 822 (Cal): 147 I.C. 209.

Ejectment from a house—The plaintiff instituted a suit for ejectment from a house of the defendants *as tenants holding over.* The defendants denied the lease and raised the question of title, which therefore had to be gone into although the plaint was stamped under sec. 7 (xi) (cc) of the Court Fees Act. The trial Court decreed the suit. The defendants appealed to the District Judge where they did not raise the question of court-fees; on second appeal to the High Court the defendants raised the question that plaint should have been stamped as in a suit for possession, although the lease was negatived, *held*, the question of title having been raised by the defendants independently of their denial of their lease it is clear that in the circumstances of the case, court-fee should have been payable on the market value of the property under sec 7, paragraph (v) of the Court Fees Act As this question has only been raised for the first time in second appeal and as the defendant-appellants in their appeal to the lower appellate Court only paid court-fees at the lower rate themselves, the question cannot be re-opened now, no defect of jurisdiction being involved, *Bapurao and others* v *Narayan Keshav Ghande*, 103 I C 337 1927 A I R. 321 (Nagpore)

A suit to eject a tenant from a house after notice to quit, is a suit to eject a tenant and court-fees calculated *ad valorem* on the rent payable for the year next before the institution of the suit, are to be paid on the plaint The Judicial Commissioner said, "A tenant or a tenant holding over is a trespasser and not a tenant of any kind after he has refused to comply with the proper notice to quit But the claim in a suit must be regarded with reference to the facts existing when the cause of action accrued and not to the state of things when the suit was filed Up to the moment he gives rise to a cause of action by refusing to quit on demand, a tenant is still a tenant, and that is the point of time to which the suit for ejectment in consequence of that refusal must be referred, *Vithaldas* v. *Ghulam Ahmed*, 23 N.L R 5: 99 I C 438· 1927 A I.R 156 (Nagpore).

The court-fees payable on a plaint in a suit to eject a tenant from a house let out to him is chargeable on one year's rent under sec. 7, paragraph (xi) (cc) of the Court Fees Act as amended and not on the market-value of the house, *Dewan Dilbagh Rai* v. *Fateh Singh*, 24 P.L R. 1907. See also *Ebrahim Shahib* v. *Ismailji*, 1 L B R 303.

A suit for possession of a house and two years' rent is to be valued at one year's rent for the possession of the house from the tenant holding over plus the amount of two years'

rent, *Balakrishna Bhimaji* v *Ramkrishna*, 33 Bom L R 263: 1931 A I R 234 (Bom).

If the defendants be not in possession of the whole of the house but of some rooms in the house then the plaintiff need not put the value of the property at the value of the whole house but can value the relief at 12 times the monthly rent payable by the defendant, *Tayabali* v *Parbatibai*, 26 S.L.R. 29: 1932 A.I.R 73 (Sind)

Tenant at Fixed Rate—In a suit to eject a tenant at fixed rent the plaint should be stamped with court-fees according to the market value of the right, *Ajodhya Chowbey* v. *Daibee Singh*, 3 Agra, Rev 5 See also *Ram Raj Tewari* v. *Girnandan Bhabat*, 15 All 63 12 All W N 240

Valuation (cc).—*When a suit was brought for possession* of leased property on the ground that the tenancy has terminated, the proper value of the suit is not the value of the immoveable property itself, but the amount of the rent payable for the year next before the date of the presentation of the plaint, *Mohan Lal* v *Bhuteswar*, 83 I C 1: 1925 A.I R 142 (All)

A suit by the landlord for recovery of immoveable property from a tenant, is to be valued at the rent payable for the year next before the date of presenting the plaint and the valuation *for purpose of jurisdiction is the same as for the purpose* of court-fees, *Nandan Sing* v *Debi Din*, 12 A L.J. 933: 25 Ind Cas 975.

Where the plaintiff landlord wanted the tenants to vacate the portion of the house occupied by them, the value of the relief claimed by her cannot be the value of the land and the buildings thereon. Either the relief cannot be valued at all or if it is to be valued, it is not unreasonable to value it at 12 times the monthly rent which the portion would yield, *Musst Murlibai* v. *Musst. Vassibai*, 104 I.C. 412: 1927 A.I.R 2[illegible] (Sind).

A suit for ejectment and recovering possession of a raiya[illegible] land, is not to be valued as a possible building site on [illegible] hypothetical assumption that the landlord would on [illegible] some naz'ar, be willing to allow it to be so used [illegible] *provisions of the Madras Estates Land Act*, *T. K. M*[illegible] *Chetty* v. *Saminathan Chetty and others*, 1933 M W [illegible] 1933 A.I.R. 367 (Mad) · 142 I.C. 195

The court-fees payable on a plai[illegible] by a raiyat are to be calculated *ad* [illegible] *Girish Chandra Dutt* v. *Girish Ch*[illegible] 54 C L J. 68: 133 I C. 689: 1932 737 (Cal)

Improvement by tenant.—Courts have no power to ask the tenant to pay court-fees for improvements claimed by him, but are bound to determine the amount, in the suit to contest the notice of ejectment, *Wasaya* v *Isa*, 4 P W R. 1915 (Rev).

When the plaintiff sues for redemption of kanom and also prays for deduction of a certain amount claimed as damages for improvement, he is entitled to pay the court-fee after the amount recoverable by way of damage has been ascertained and set off against the amount payable by way of improvement as the words "any sum of money accruing due for rent or otherwise in respect of the tenancy" are wide enough to include damages, *Govindan Nayar* v. *Kankirathholikayi Ithalithy*, 50 M.L J 493 1926 A I R 764 (Madras) reversing 1926 A.I.R. 542 (M)

Clause (d). *Claim for Improvements*—A suit to contest the notice of ejectment on the ground that the plaintiff to receive compensation for improvements, before he vacates, is to be stamped on the amount of rent payable for previous year, as claim for improvement is incidental to the decree for possession and is not the subject-matter of suit, *Nurulla* v. *Atr Singh*, 111 P R 1883, see also *Reference Under Court Fees Act*, 23 Mad 84, *Wasaya* v. *Isa*, 4 P W.R. 1915 (Rev.).

Tenant-at-will—In a suit to eject a tenant at will the court-fee is 8 annas under Schedule II, Art. 5 of the Court Fees Act, *Nurjahan* v *Marfan Mundul*, 11 C.L R 91 And an application to the Collector under section 25 of the Act of 1859 for assistance in ejecting a ryot should also be stamped with a court-fee of 8 annas as such a proceeding is not a suit, *Pyary Mohan Mookerjee* v *Kina Bewa*, 11 W.R. 90: 2 B L R A C. 226

Clause (e). *Suit against landlord and some others*—A suit was brought for recovery of possession of an occupancy holding against the landlord *and some others* whom the landlord inducted on the land, held that court-fees should be computed according to market value of the land, *Farzand Ali* v. *Mahanth Lal Puri*, 32 Cal. 268; but this case was not approved in *The Secretary of State for India* v. *Dinshaw Naoroji and another*, 1925 A.I.R. 275 (Sind): 87 I.C. 1002, where it was held that when in order to avoid delay in execution proceedings a person inducted on the land by the landlord is joined as a party, such a suit falls under section 7 (xi) (e) of the Court Fees Act.

A suit for possession by a tenant against landlord and *certain other persons* claiming *melawaram* rights under him is governed by section 7 (v) and not by section 7 (xi)(e). The words *"occupancy of land"* and *"ejected"* are applicable to the case of ryot or persons in actual possession rather than to persons who are only entitled to the *malawaram* rights, *Palaniappa*

rent, *Balakrishna Bhimaji* v *Ramkrishna*, 33 Bom L.R 263: 1931 A I R 234 (Bom)

If the defendants be not in possession of the whole of the house but of some rooms in the house then the plaintiff need not put the value of the property at the value of the whole house but can value the relief at 12 times the monthly rent payable by the defendant, *Tayabali* v *Parbatibai*, 26 S L R 29: 1932 A I R 73 (Sind)

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A suit by the landlord for recovery of immoveable property from a tenant, is to be valued at the rent payable for the year next before the date of presenting the plaint and the valuation for purpose of jurisdiction is the same as for the purpose of court-fees, *Nandan Sing* v *Debi Din*, 12 A.L J. 933: 25 Ind Cas 975

Where the plaintiff landlord wanted the tenants to vacate the portion of the house occupied by them, the value of the relief claimed by her cannot be the value of the land and the buildings thereon Either the relief cannot be valued at all or if it is to be valued, it is not unreasonable to value it at 12 times the monthly rent which the portion would yield, *Musst Murlibai* v. *Musst Vassibai*, 104 I C 412: 1927 A.I.R. 248 (Sind).

A suit for ejectment and recovering possession of a raiyati land, is not to be valued as a possible building site on the hypothetical assumption that the landlord would on receiving some nazar, be willing to allow it to be so used under the provisions of the Madras Estates Land Act, *T K. M. Alagappa Chetty* v *Saminathan Chetty and others*, 1933 M.W.N. 1128: 1933 A.I.R. 367 (Mad.): 142 I C. 195.

The court-fees payable on a plaint to eject an under-raiyat by a raiyat are to be calculated *ad valorem* on one year's rental, *Girish Chandra Dutt* v. *Girish Chandra Mali*, 36 C W N. 190: 54 C L J. 68: 133 I C. 689: 1932 A.I.R 6 (Cal): 1931 I.R 737 (Cal).

Improvement by tenant.—Courts have no power to ask the tenant to pay court-fees for improvements claimed by him, but are bound to determine the amount, in the suit to contest the notice of ejectment, *Wasaya* v. *Isa*, 4 P.W.R 1915 (Rev)

When the plaintiff sues for redemption of kanom and also prays for deduction of a certain amount claimed as damages for improvement, he is entitled to pay the court-fee after the amount recoverable by way of damage has been ascertained and set off against the amount payable by way of improvement as the words "any sum of money accruing due for rent or otherwise in respect of the tenancy" are wide enough to include damages, *Govindan Nayar* v. *Kankiratholikayi Ithalithy*, 50 M L J 493: 1926 A I R 764 (Madras) reversing 1926 A I R 542 (M)

Clause (d). *Claim for Improvements*—A suit to contest the notice of ejectment on the ground that the plaintiff to receive compensation for improvements, before he vacates, is to be stamped on the amount of rent payable for previous year, as claim for improvement is incidental to the decree for possession and is not the subject-matter of suit, *Nurulla* v *Atr Singh*, 111 P R. 1883, see also *Reference Under Court Fees Act*, 23 Mad 84, *Wasaya* v *Isa*, 4 P W R 1915 (Rev)

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A suit for possession by a tenant against landlord and *certain other persons* claiming *melawaram* rights under him is governed by section 7 (v) and not by section 7 (xi) (e). The words *"occupancy of land"* and *"ejected"* are applicable to the case of ryot or persons in actual possession rather than to persons who are only entitled to the *malawaram* rights, *Palaniappa-*

Chetty v *Sithrave*, 31 Mad. 14: 17 M.L.J. 478: 3 M.L.T. 80 See also *Musst Bhagobai Devisingh and another* v. *Shiamlal Dwarkaprasad*, 147 I.C 749 (Nagpore): 29 N L.R. 367: 1933 A I R 312 (Nag).

Illegally ejected.—The words "illegally ejected" have been explained to mean "ejected nominally in conformity with, but really, in contravention of the provisions of the rent law of ejectment of tenants by landlords, *Sunder Mal* v. *Jessie Caroline Murray*, 16 C L J 375 at page 376: 16 Ind. Cas. 963

Suit against landlord on the basis of illegal ejectment—A suit for possession by an occupancy tenant against his landlord on the basis of illegal ejectment falls under section 7 (xi) (e) of the Court Fees Act only when there is no question of title to be gone into, but where there is a question of title involved, the case falls under section 7 (v) of the Act and the court-fees payable would be *ad valorem* on the market value, *Krishna Chandra Gountia* v *Raja Mahakur*, I.L R 5 Patna 208· 94 I C 16: 1926 A I R 251 (P.): 7 P L T. 642.

Clause (f).—The year next before the date of presenting the plaint "denotes a period of 365 days reckoning backwards from the date of presentation of plaint," *Ghasi Ram* v. *Har Govind*, 28 All 411: 3 A L J 244 26 All W.N. 66.

Fee on memorandum of appeal against order relating to compensation.

8. The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

NOTES

Application.—This section applies to appeals by persons claiming compensation. An appeal by the Secretary of State against the award of the Court requires a court-fee of Rs 10 only under Art. 17, clause (4) of Schedule II of the Act, *The Secretary of State* v. *Basawa*, 17 Ind. Cas. 764: 17 P L R. 1912 See also *In re Assistant Commissioner of Labour*, (1924) A I R 489 (Mad.): 1924 M.W N. 108: 78 Ind Cas. 435: 46 M.L J 150, but in 1921 the Land Acquisition Act (1 of 1894) was amended by Act XIX of 1921 and every award is a decree and appeals will lie accordingly. See *Rai Bahadur Narsing Das* v *The Secretary of State for India in Council*, 29 C.W.N. 822 P C See also *The Secretary of State for India in Council* v. *K. S*

Banerjee, 97 I.C. 140: 1927 A I R. 45 (Calcutta) where it was held that the provisions of s. 8 of the Court Fees Act may, after the amendment of the Land Acquisition Act, now be regarded as redundant and the discrimination between the claimant and the Secretary of State is no longer warranted.

The Secretary of State for India is not a claimant to any sum awarded by the Collector in a land acquisition proceeding, therefore, s 8 does not apply to an appeal by the Secretary of State for India to reduce the amount of compensation awarded but the memorandum of appeal is to bear *ad valorem* court-fees on the amount in question as the order of the Land Acquisition Court is a decree, *The Secretary of State for India* v *Baijnath*, 9 O.W N 396: 1932 A I.R 224 (Oudh)

Section 8 of the Court Fees Act being a special provision as regards appeals from Land Acquisition cases, overrides the general provision of Schedule II, Art. 17 (iv), *Puran Chand and others* v *Emperor*, 1926 A I R 343 (Lahore) 92 I C 991

Effect of Amendment.—The court-fees payable on a memorandum of appeal preferred against a decision in reference under sec 30, Land Acquisition Act are payable *ad valorem* under Sch I, Art. 1 of the Court Fees Act and s 8 of the Court Fees Act does not apply to such a case, *Mahalinga Kudumban* v *Theetharappa Mudaliar*, 56 M L J 387 1929 M W N 62. 115 I C 345 1929 A I R 233 (Mad).

N B—Application for compensation under the Land Acquisition Act need not be stamped with court-fees under section 19, clause xxxii of this Act

Scope.—Section 8 deals with the fee payable on a memorandum of appeal against an order relating to compensation under any Land Acquisition Act for the time being in force, and under the Act of 1894 such appeals lie to the High Court but under older Act the appeal lay to the District Judge, *Krishna Mohan* v. *Raghunandan*, 1925 Pat C.W N 65: 4 Patna 336, 1925 A.I.R. 392 (Patna): 6 Pat L T. 262. 87 I C. 137 (F.B).

Power of Appellate Court.—The appellate Court cannot pass a decree for a larger amount than that stated in the memorandum of appeal unless the memorandum of appeal be amended and additional court-fees put in, *Percival* v. *Collector of Chittagong*, 30 Cal 516.

In cases coming under the Land Acquisition Act (I of 1894), the amount awarded under the decree on appeal should be limited to the amount for which court-fee has been paid on the memorandum of appeal, *Mahomed Ali Amjad* v. *The Secretary of State for India*, 30 Cal 501.

Valuation of appeal.—*Statutory allowance*—The extra amount of compensation claimed by the appellant in an appeal

under s 8 of the Court Fees Act includes also the 15% of the market value and he should pay court-fees on the total amount including the 15% He cannot value his appeal, and at the same time in case of success, not only claim to have that excess market value decreed to him but also claim that the appellate decree should automatically give an additional 15% of the said excess market value An appeal is different from the claim put forward by him before the Collector, *Koppaka Brahmanandam* v. *The Secretary of State for India*, 53 Mad. 48: 57 M.L.J. 357: 1929 M W N 599 30 L W 242, 1930 A I.R. 45 (M.): 122 I C 523 but see contra F A 314 of 1917 (unreported) where Rankin C J and Mookerjee J agreed that court-fees on statutory allowance are not leviable In *Percival* v. *The Collector of Chittagong*, 30 Cal 516 at page 520, the Calcutta High Court said "under the provisions of s 582 (s 107, paragraph 2), Code of Civil Procedure we ought to restrict our award to the amount stated in the memorandum of appeal, plus the amount allowed by the lower Court and the *usual statutory allowance*."

Notes.—After the amendment of the Land Acquisition Act, 1894 by Act XIX of 1921 every decision is a decree, and the provisions of Sch I, Art 1 are applicable to an appeal, hence the 15% awarded must be subject-matter of an appeal before court-fees can be assessed on the same No grounds in any memorandum of appeal are directed against the award of 15% which it is the duty of Court to award The award of 15% being a duty cast upon Court under s 22 (2) the same cannot be deemed a subject-matter of appeal, hence it is submitted no court-fees can be levied on the same The market-value of the land is the subject-matter of appeal

Memorandum of Appeal.—The memorandum of appeal against all orders made by the District Judge under the Land Acquisition Act is to be stamped with *ad valorem* court-fees. *Kasturi* v. *Deputy Collector of Bellary*, 21 Mad 269. See *In re Assistant Commissioner of Labour*, 1924 M W.N 108: (1924) A I R 489 (Mad): 46 M L J 150: 78 I.C 435; *Mahomed Suleman* v. *Ghumandi Lal*, 32 P L R 251: 134 I.C. 127: 1931 A I R 343 (Lah.): 1931 I R. 895 (Lah.)

The memorandum of appeal from an order by the Improvement Tribunal is to be charged with *ad valorem* court-fees on the amount in claim Rankin C. J proceeded to say, 's. 8 while not itself imposing any fee upon any one provides a rule for computation of the fee payable under the Act in certain classes of cases.'..... ....'The purpose of s 8 is to say that when you come to make a charge under Sch I, Art. 1, the figure which is to be taken as the appropriate figure under col 2 is the figure to be computed by finding out the

difference between the amount awarded to the appellant and the amount claimed by him '................'S. 8 necessarily involves that there is an *ad valorem* charge laid down either under s. 4 or under s. 6 and contained in s 6 '..... ....'The provisions of s 8 involving as they do that the fee in the class of cases dealt with, is an *ad valorem* fee are themselves sufficient to exclude any question of Art 11 of Sch. II being made applicable to such cases '.. ......'It is not necessary to consider whether the tribunal's award which is an order and not a decree is an order having the force of a decree whatever the effect of that phrase may be, s 8 shows one perfectly clear that an appeal regarding compensation in land acquisition case is not under Art 11, Sch II because it is not a fixed fee at all ' *In re Anand Lall Chacarbutty,* 59 Cal 528· 35 C W N 1103, 1932 A I R 346 (Cal)

Appeal by Secretary of State—A memorandum of appeal by the Secretary of State against an award of compensation by the District Court made under the Land Acquisition Act (I of 1894) as amended, is to be stamped under Schedule I, Art 1 of the Court Fee Act if s 8 of the Court Fees Act does not apply to such a case Art 17, cl iv of the second Schedule does not apply as it is not sought to set aside an award, *Special Collector of Rangoon* v *Ko Zi Na and others,* 6 Ran 281· 110 I C. 870 1928 A I R 197 (Ran) See also *The Secretary of State* v. *K S Bonerjee,* 97 I C 140 1927 A I R 45 (Cal)

Apportionment of award—In an appeal from an order for apportionment of compensation between claimant and the Government the memorandum of appeal should bear court-fee stamp *ad valorem* on the value of the land claimed because apportionment really means determination of the amount payable by Government, *Mangal Das Girdhar Das* v *The Assistant Collector of Ahmedabad,* 64 Ind Cas 582 45 Bom 277: 23 Bom L R · 148 F B

Disposal of Compensation—In an appeal from the order of the District Judge made upon a reference by the Collector under sections 18 and 19 of the Land Acquisition Act as to the disposal of compensation money awarded for land taken up by Government under the Act, the memorandum of appeal must be stamped as an appeal from an original decree and not an appeal from an order, *Sheo Ratan Rai* v *Mohri,* 21 All 354: 12 All W.N. 96; *Balaram* v *Sham Sundar,* 23 Cal 531

Investment of award—Where certain *debutter* properties were acquired under the Land Acquisition Act and the Court ordered, under section 32 of the Land Acquisition Act, that the compensation money be invested in Government Promissory Notes and the shebait is to draw interest only and against that order, the shebait filed an appeal, and stamped the memorandum of

appeal with a court-fee of Rupees 10, held, that the relief sought could be estimated at a money value, at least approximately, and that the case fell under section 8 of the Court Fees Act and the memorandum of appeal is to be stamped with an *ad valorem* court-fee calculated on the difference between the amount awarded and the amount claimed by the plaintiff, *Trinayani Dasi* v *Krishna Lall Dey*, 39 Cal 906: 17 C W.N 933 (935): 14 I C 724, *Mahammad Ali Raja Avergal* v *Ahammad Ali Raja Avergal*, 26 Mad 287, *Shiva Rao* v *Nagappa*, 29 Mad 117.

The above cases in 39 Cal 906 and 23 Cal. 531 were dissented from in *Ram Chandra* v *Ram Chandra*, L.R 49 I A. 129 (137) where the Judicial Committee said "the award constituted by statute is nothing but an award which states the area of the land, the compensation to be allowed and the apportionment among the persons interested in land of whose claims the collector has *information, meaning thereby people whose interests* are not in dispute but from the moment when the sum has been deposited in Court under s. 31, sub-section 2, the function of the award have ceased, and all that is left is a dispute between interested people as to the extent of their interest But the dispute forms no part of the award and it would indeed be strange if a controversy between two people as to the nature of their respective interests in a piece of land should enjoy certain rights of appeal, which would be wholly taken away when the piece of land was represented by a sum of money paid into Court"

A memorandum of appeal from a decree passed in a contest between a purchaser from a widow (who was alive at the date of contest) and the reversioner as to the investment of the award is to be stamped as in an appeal from a declaration only and *ad valorem* court-fees need not be paid, *Rash Behary Sanyal* v. *Gosto Behari*, (1934) 62 Cal. 331 39 C W N. 110: 60 C L J 216. 1935 A.I.R. 243 (Cal)

After the amount of compensation money is paid into Court by the Collector, an appeal in which the subject-matter is that which of the claimants is entitled to the compensation money is an appeal for the recovery of the money from the successful claimant and would have to be valued as a claim for money and *ad valorem* court-fees paid on that basis, but if the claimant be a widow then if the money be held in trust for her by the Court then the above dictum will not apply as the property is in *custodia legis* and the court-fee payable would be as for a mere declaration, but if any interest paid to the widow be sought [illegible] s on the amount in claim [illegible] v. *Venkataramanamma*, [illegible] .N. 420 · 35 L.W. 618: 1932 A.I.R. 438 (Mad). See also *Ponnuswami Nadar* v. *The Secretary of State*, 68 M.L J. 327: 1935 A.I.R. 318 (Mad).

[But in these cases the language of this section as to an order relating to compensation was disregarded.]

Orders dismissing petitions—But if the District Judge dismisses the petition of the petitioner and refers him to the Civil Court, then the memorandum of appeal by the petitioner, is to be stamped with a court-fee under Art. 11, Schedule II of the Court Fees Act, *Hurrish* v *Bhoba Tarini*, 8 C.W N 321.

Case of several appeals—Where there are a number of appeals, in which the parties are the same and the lands which are contiguous to one another, form one estate, although in occupation of different tenants, who were not parties to appeals, the court-fees payable are to be calculated on the value of the consolidated appeals under s 17 of the Court Fees Act subject to the limitation in proviso under Art 1, Sch I of the Court Fees Act, *Kashi Prasad Singh* v *The Secretary of State*, 29 Cal. 140, but see *Moosa Soleman Saleji and others* v *The Secretary of State for India*, 32 C W N 776, where it was held that Court-fees must be paid on each appeal separately

Refund—Orders for refund of money paid under a mistake is not an award and is not therefore appealable, *Nobin Kali Debi* v *Banalata Devi*, 32 Cal. 921

[For **Bengal** only—
After section 8 of the said Act, the following sections shall be inserted, namely —

Statement of particulars of subject-matters of suits and plaintiff's valuation thereof

8A. *In every suit in which an ad valorem court-fee is payable under this Act on the plaint, the plaintiff shall file with the plaint a statement of particulars of the subject-matter of the suit and his own valuation thereof unless such particulars and the valuation are contained in the plaint The statement shall be in such form and shall contain such particulars as may be prescribed by the Local Government by notification in the Calcutta Gazette. In every such suit the plaintiff shall also, if the Court so directs, file a duplicate copy of the plaint and of the said statement.*

Procedure where insufficient court-fee is filed on plaint or memorandum of appeal

8B. (*1*) *In every suit in which a court-fee is payable under this Act on the plaint or memorandum of appeal the Court shall, as soon as may be*

after the registration of the plaint or memorandum of appeal, and in every case before proceeding to deliver judgment, record a finding whether a sufficient court-fee has been paid.

(2) If the Court records a finding that an insufficient court-fee has been paid on the plaint or memorandum of appeal the Court shall—

(a) stay all further proceedings in the suit until it has determined the proper amount of such court-fee payable and the plaintiff or the appellant, as the case may be, has paid such amount or until the date referred to in clause (b), as the case may be:

Provided that if the plaintiff or appellant gives, within such time as the Court may allow, security, to the satisfaction of the Court, for the payment of any additional amount for which he may be found liable the Court may proced with the suit.

(b) fix a date before which the plaintiff or appellant shall pay the amount of court-fee due from him, as determined by the Court under clause (a)

(3) If the plaintiff or appellant fails to give the security referred to in clause (a) of sub-section (2) or to pay the amount referred to in clause (b) of that sub-section within the time allowed, or before the date fixed, by the Court, as the case may be, the suit shall be dismissed.

Inquiry as to valuation of suits.

8C. *If the Court is of opinion that the subject-matter of any suit has been wrongly valued it may revise the valuation and determine the correct valuation and may hold such inquiry as it thinks fit for such purpose.*

8D. (*1*) *For the purpose of an inquiry under section 8C the Court may depute, or issue a commission to, any suitable person to make such local or other investigation as may be necessary and to report thereon to the Court. Such report and any evidence recorded by such person shall be evidence in the inquiry.*

Investigation to ascertain proper valuation.

(*2*) *The Court may, from time to time, direct such party to the suit as it thinks fit to deposit such sum as the Court thinks reasonable as the costs of the inquiry, and if the costs are not deposited within such time as the Court shall fix, may, notwithstanding anything contained in any other Act, dismiss the suit if such party is the plaintiff or the appellant and, in any other case, may recover the costs as a public demand*

8E. (*1*) *The Court, when making an inquiry under section 8C and any person making an investigation under section 8D shall have, respectively, for the purposes of such inquiry or investigation, the powers vested in a Court under the Code of Civil Procedure, 1908, in respect of the following matters, namely —*

Power of persons making inquiry under sections 8C and 8D

(*a*) *enforcing the attendance of any person and examining him on oath or affirmation;*

(*b*) *compelling the production of documents or material objects; and*

(*c*) *issuing commissions for the examination of witnesses*

(*2*) *An inquiry or investigation referred to in sub-section* (*1*) *shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code.*

8F. *If in the result of an inquiry under section 8C the Court finds that the subject-matter of the suit has been undervalued the Court may order the party responsible for the und..*

Costs of inquiry as to valuation and refund of excess fee.

valuation to pay all or any part of the costs of the inquiry.

If in the result of such inquiry the Court finds that the subject-matter of the suit has not been under-valued the Court may, in its discretion, order that all or any part of such costs shall be paid by Government or by any party to the suit at whose instance the inquiry has been undertaken, and if any amount exceeding the proper amount of fee has been paid shall refund the excess amount so paid.

Repeal of sections 9 and 10

9. *Sections 9 and 10 of the said Act are hereby repealed.*]

Power to ascertain nett profits or market value

9. If the Court sees reason to think that the annual nett profits or the market-value of any such land, house, or garden as is mentioned in section 7, paragraphs (v) and (vi), have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person, directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

NOTES.

Repeal.—Repealed in Bengal.

Application.—This section applies to suits and not to appeals, *Balkaran Rai* v. *Gobinda*, 12 All. 129: 10 A.W.N 39 F.B.; *Hari Ram* v. *Akbar Hossain*, 4 All.L J. 636: 29 All. 749: 27 All.W.N. 253: 2 M.L.T. 373 F.B

Scope.—Section 9 merely lays down the procedure to be followed when the Court is of opinion that the suit has been under-valued It is not open to Court without any evidence on the point and without following the procedure prescribed by section 9 to hold that the land in suit is worth more than the present value, *Hari Pada Chakrabarti* v. *Dwijendra Narain Roy*, 5 C L J. 28 (notes).

If the Court sees reason to think—*Charts of valuation*—Where the determination of the amount of court-fees payable depends upon valuation, the particular and appropriate provi-

sions of s. 9 of the Court Fees Act should always be followed, 'S 9 begins with the words, 'If the Court sees reason to think that the market-value of any land has been wrongly estimated.' For the purpose of these opening words there is no illegality in any reference to a chart or to a gazetteer or to anything else that will assist. This is not a question of judicial decision. The Court merely sees reason to think that the suit is undervalued and that by itself will hurt nobody. But if the Court wants this matter to be pursued and it is a matter upon which evidence of external facts is plainly necessary—the Court must undertake the investigation in a judicial manner It says that the Court may issue a commission to any proper person directing him to make a local or other investigation and to report to it. If that commission is issued and if a report is made, it is clear that then *the learned Judge has a judicial duty to come to a decision on the* basis of the commissioner's report Such a commission is a commission under the Civil Procedure Code and what the commissioner may do and what the duty of the learned Judge is, is laid down quite clearly by the Civil Procedure Code" * * *

"It is very necessary that these investigations should not be embarked without due reason. It will obviously be a hardship to the plaintiff that he should have an extra stage of litigation to go through before he can prosecute his suits" * * * * "There is no power to make the plaintiff deposit the costs of the commission" * * * * * "The proper course is to deal with the matter when the plaint or the memorandum has been filed. If the result of the enquiry is to the effect that the plaintiff's valuation is insufficient, then the plaintiff may be called upon to make the necessary deposit"

A District Judge, if he has any uneasiness as to the amount of court-fees paid, is to take action under s 9 by appointing a commission or by holding a judicial enquiry himself Charts of valuation may be used for the purpose of opening words of s 9 of the Court Fees Act but such charts should not be used as evidence in themselves, *Jalekha Bibi and another* v *Danis Mohomed and others*, 33 C W N 952· 50 C L J 164· 1930 A I.R 65 (Cal.) See also *Badarannessa Chowdhurani* v. *Ram Chandra Mala Das and others*, 33 C W.N. 845: 49 C L J. 562: 1929 A.I.R 717 (Cal)

Local investigation—This section as originally drawn, followed the provisions of the then existing law (Act XXVI of 1867) on this subject; but the committee were strongly of opinion that local investigation for the purpose of valuing a suit should be discouraged as much as possible, as, in effect, they entailed to the parties to the suit all the trouble and expense of an extra suit merely to determine the question of the amount due

to the revenue They proposed, therefore, to substitute words the effect of which would be to require the Court to determine, in each case, whether such local investigation was necessary or expedient instead of directing the enquiry to be made as a matter of course on the mere requisition of a party to the suit, *Proceedings of the Legislative Council, (India Gazette Supplement, 26th February, 1870)*.

On questions arising as to the proper valuation of a suit, the Court may issue a commission and make enquiry as to the market-value and nett proceeds of the property; the final decision as to valuation rested with the Court, *Uma Sanker Ray Chowdhury* v *Sayad Mansur Ali Khan*, 5 B.L.R. Ap. 6: 13 W R 326 But the Court is not bound to appoint a commissioner to hold an investigation, *Hari Ram* v *Akbar*, 29 All. 749: 4 A. L J. 636: 27 (1907) A W.N. 253: 2 M L T. 373; and a party has no absolute right to adduce evidence before Court after the report of the commissioner The point must be decided on the facts of every particular case, *Girish Chandra* v. *Sashi*, 27 Cal. 951. This section does not restrict the Court to Amin's report but allows the Court to appoint an Amin to make a local investigation just as in any other case under the Code of Civil Procedure, *Madoosoodan* v *Ryemonee*, 13 W R 415.

Parties to the question as to the court-fees payable.—A question as to the amount of court-fees payable is a question between the Court and the plaintiff and is not a question between the parties at all, *Godha Mal and others* v *Prem Singh and others*, 110 I.C. 179: 1928 A I.R. 560 (Lah.).

Onus of proving valuation.—When the defendant asserts that the suit is over-valued, the onus of proving the truth of his assertion lies on him, *Umasankar* v *Mansur Ali*, 13 W.R. 326: 5 B.L R. (App) 6; *Wajid Ali* v. *Hanuman*, 12 W.R. 484: 4 B L.R A.C. 139, *Musst Soobudra* v. *Raja Ram Prabash Singh*, 16 W R. 5; *Musst Dhunnoo* v. *Damodar Das*, 2 N.W.P. 177. But where, whether any commission had been issued or not, the munsiff finds the value to be within his jurisdiction. the Subordinate Judge cannot hold that the munsiff had no jurisdiction to do so, *Ishan Chandra Mookerjee* v. *Lokenath Roy*, 6 B L.R A C. 72: 14 W R. 451.

Determination of stamp duty on appeal.—Where for the purpose of the stamp duty on an appeal, it is impracticable to ascertain accurately what portion of permanent revenue has been assessed on the lands in dispute in a suit, the appellant should furnish to the Registrar a memorandum giving an estimate of the market-value and the data on which it is founded If the Registrar considers the estimate clearly insufficient, the Court will issue a commission to ascertain the proper market-

value, *Exparte Moone Rangappen*, 3 Mad H.C. 352; *Dhunnoo v. Damodar*, 2 N.W.P. 177.

Power of revision.—The power of revision provided by section 9 relates to an estimate given by the plaintiff of the annual nett profits of the land or the market-value of the land, house or garden as mentioned in section 7, paragraphs v and vi, *Chinnammal v Madarsa Rowther*, 27 Mad. 480: 14 M L J. 343.

Procedure where nett profits or market value wrongly estimated

10. (*i*) If in the result of any such investigation the Court finds that the nett profits or market-value have or has been wrongly estimated, the Court, if the estimation has been excessive, may in its discretion refund the excess paid as such fee; but, if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or nett profits been rightly estimated.

(*ii*) In such case the suit shall be stayed until the additional fee is paid If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed

NOTES

Repeal.—Repealed in Bengal

Alteration in law.—This section had another clause repealed by the Repealing and Amending Act (XII of 1891), which ran as follows —

Section 180 of the Code of Civil Procedure shall be construed as if the words, "the market-value of any property or" were inserted after the word "ascertaining" and as if the words "or annual nett profits" were inserted after the word "damages."

Local Amendment.

The following paragraph has been substituted for paragraph (ii) by Assam Legislature:—(ii) In such case—

Amendment of s 10

(a) *the suit shall be stayed until the additional fee is paid and if the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed; and whether the additional fee is or is not paid,*

(b) *the Court may, if it is of opinion that the estimation has been grossly insufficient, further order that the*

expenses of the commission, or such portion thereof as the Court may think reasonable, be paid by the party in fault to the Government and the order so made shall have the force and effect of a decree passed by the Court

Application.—Section 54 of the Code of Civil Procedure, [Order 7, Rule 11 (Act V of 1908)] which directs that a plaint shall be rejected in certain cases, applies only to the initial stages of a suit before a plaint has been registered, whereas the application of this section is not susceptible of restriction to any particular stage, *Valya Kesava Vadyar* v. *Suppan Nair*, 2 Mad 308; *Padmanand Singh* v *Anant Lal Misser*, F.B. 34 Cal 20: 11 C.W N. 38: 4 C L.J. 422, where it was held that section 54 applies to any stage of a suit

Section 54 of the Code of Civil Procedure and section 10 of the Court Fees Act have reference to different stages of a suit. Where the plaint had been valued *bona fide* and the proper court-fees had been paid so far as such valuation was concerned, but payment of additional court-fee was necessitated by the result of the enquity under section 9 of the Court Fees Act, such a suit cannot be held to be barred because when the additional court-fee called for by the Court was paid the period of limitation for the suit had expired, *Babu Lal* v *Asi Kunwar*, 27 All 197 (1904) 24 All W N 224: 1 All L J. 641; *Ghasiram* v *Hargobind*, 27 (1907) A W N 18 · 28 All 411 But see *contra*, section 54 applies to any stage of a suit, *Kishore Singh* v *Sabdal Singh*, 12 All 553.

Scope.—Sections 9 and 10 provide machinery for ascertaining the value of land and houses, the subject-matter of a suit, when the Court thinks that the value has been wrongly estimated to the detriment of revenue, *Krishna Mohan Singha* v. *Raghunandan Pandey*, 1925 Pat C W N 65: 4 Pat 336: 6 Pat L T. 262: 87 I.C. 137: 1925 A I R 392 (Pat) F.B.

Section 10 allows a Court to dismiss a suit for non-payment of the additional court-fees where it has jurisdiction to hear and decide the suit. No other Court can dismiss the suit under s 10 When at a subsequent stage of the suit, it is found that the court-fees are insufficient and that the value of the property has been under-estimated, the Court has power to make an enquiry as to the value of the property and *if the Court has jurisdiction to decide the case,* can dismiss the suit, if the additional court-fees are not paid within such time as the Court shall fix and that is because the party disobeys the order of the Court and the suit shall fail for want of prosecution. Where, however, the market value of the property goes beyond the pecuniary jurisdiction of the Court which has made such enquiry, then it is the imperative duty of the Court under Order 7, Rule 10,

C.P.C. to return the plaint for presentation to the proper Court. When the plaint is returned for presentation to the proper Court, the plaintiff can take advantage of the court-fees that has been paid on the previously filed plaint and he could pay the deficit court-fees in the Court having jurisdiction to hear the case, *Ganesh Tavanappa Barde* v. *Tatya Bharmappa Mirji*, 51 Bom. 236: 29 Bom L.R 280: 100 I C. 343: 1927 A I R 257 (Bom.).

Construction of the section.—In the case of *Mahammad Salim* v. *Nabian Bibi*, 8 All. 282 (287), Mr. Justice Mahmood said at pages 286-287: "The object of these provisions, as indeed of the Act, is to lay down rules for the collection of one form of taxation, and this, I regard to be the scope of the enactment, though it contains no preamble at all; and, I hold it as a fundamental rule of construction that statutes which impose pecuniary burdens or encroach upon the rights of the subject, or qualify those rights, must be construed strictly. The rule applies with special force to such provisions as provide a penalty, whatever its nature may be "

Duty of appeal Court—The District Judge should come to a finding on the true value of the properties in suit for the purpose of court-fees and without coming to a finding on the question he could not hold that the memorandum of appeal was insufficiently stamped in an appeal against a decree of the trial Court *rejecting a plaint for non-payment of the deficit court-fees*, *Amarta Lal Kumar* v *Basu*, 1926 A I R 427 (Cal). See also *Jalekha Bibi and another* v *Danis Mahomed and others*, 33 C W.N 952 50 C L J 164 1930 A I R 65 (Cal)

Effect of dismissal of suit—Dismissal of a suit under this section cannot operate as *res judicata* as this is only a penal clause, *Muhammad Salim* v *Nabian Bibi*, 8 All 282

The dismissal has the same effect as under section 56 of the Code of Civil Procedure (Or 7, rule 13) in cases of rejection under section 54 (Or 7, rule 11) of the Code of Civil Procedure, *Balkaran Rai v Govinda*, 12 All 129: 10 A W N. 39

Clause II.—The word "suit" in clause (ii) of section 10, includes an appeal, *Dyal Singh* v *Ram Rakha*, 109 P R. 1912: 136 P.W.R 1912 15 Ind Cas 463

Procedure in case of non-payment.—*Stay of suit until the deficiency is made good*—Where the munsiff returned the plaint for want of jurisdiction and the plaint was presented to the proper Court where the Munsarim reported that the court-fee paid was insufficient, whereupon the Court extended the time to pay the deficit court-fees and stayed the suit, the deficiency was paid within the time and the plaint registered, *held*, that the sub-judge was right in staying the suit under section 10 of the Court Fees Act, *Tajammal Hosain Khan* v *Nowabdad Khan*,

6 M L T 362: 3 Ind. Cas 830; *following Hariram* v. *Akbar*, .. All 749 F B.

Dismissal of suit—Where upon the proper valuation of a suit an appellate Court finds that there is a deficit in the amount of court-fees paid by the plaintiff on his plaint and memorandum of appeal, the correct procedure for the Court to adopt is to call upon the plaintiff to make good the deficiency and on his failing to do so, to enforce its order by dismissal of the suit in the appellate Court In such cases the rejection of plaint is inappropriate, because section 10 of the Court Fees Act enjoins dismissal without option, *Brij Krishna Das* v. *Murli Rai*, 4 Pat L J. 703: 56 Ind. Cas. 316. *Cf* Or 7, rr. 10 & 11 of the C. P C, 1908.

If, as the result of the enquiry under section 9 of the Court Fees Act the Court orders the additional court-fees to be paid within a time, and the plaintiffs fail to do so, then plaint is not to be rejected under section 54 of the Code of Civil Procedure (Order 7, rule 11) but the suit itself should be dismissed under section 10 of this Act, *Walli Amanji* v *Mahmad Adam*, 16 Bom L.R. 763: 26 Ind Cas. 746.

Where the party to an appeal has been called upon to pay the deficit court-fees (due from him) but not paid in the lower Court and he fails to pay it, the Court is bound to dismiss the suit under s. 10 (ii) of the Court Fees Act The provisions of s. 10 (ii) of the Court Fees Act are mandatory and the power may be exercised at any time so long as the suit remains before the appellate Court, *Bidhu Bhusan Bakshi* v. *Kalachand Ray*, 31 C.W N. 1045: 106 I.C. 335: 1927 A I R. 775 (Cal.).

But the original suit cannot be dismissed under sections 10 and 12 of this Act before the appeal is admitted, *Govinda* v *Parameswara*, 1 M.L.J. 528

Penalty for non-payment—The original bill contained no effectual provision as to consequences of the non-payment of the additional fee discovered to be due by the result of the local enquiry as to market value of the litigated property. The amended bill empowered the Court to fix the time within which such additional fees must be paid and to dismiss the suit in default of such payment.

The powers conferred by sections 54 (a) and (c) and 55 (of the Act of 1882), read with section 582 of the Code of Civil Procedure, or by section 12 of the Court Fees Act (VII of 1870), read with clause (ii) of section 10, are intended to be exercised before the disposal of the case, and not after it has been decided finally so far as that Court is concerned, *Mahadri* v. *Ram Kishen Das and others*, 7 All. 528: 5 A.W.N. 140.

Question of court-fees to be dealt with at the earliest possible

moment.—It is desirable that where the appellate Court has to deal with the question of deficit court-fees it must be done at the earliest possible moment and the expense of printing a paper book should not be incurred till the question is settled, *Hitendra Sing* v. *Sir Rameshwar Singh*, 62 Ind. Cas 43: (1921) C.W.N. Pat. 161 · 2 P L T 383: 6 Pat. L.J. 293 F.B. See also *Walaiti Ram* v. *Gopiram and others*, 152 I C. 799: 1935 A.I.R 75 (Lah), where it was further held that the Court if it finds that a document is insufficiently stamped it should stay the proceedings in the suit and fix a time within which the court-fees are to be paid and dismiss the suit if the demand is not complied with. The Court should not while dismissing the suit on the merits add a rider to the decree that the deficient court-fee is to be realized from the plaintiff.

Extension of time —The Court is competent to extend the time originally fixed for payment of additional court-fees, *Chuni Lal* v. *Ajudhia Prasad*, 19 All. 240: (1897) 17 A W.N. 40; *Dwarka Nath Biswas* v. *Kedar Nath Biswas*, 2 Ind Cas. 1; *Bhagwandas* v *Haji Abu*, 16 Bom. 263; *Raikisori* v. *Madan Mohan*, 31 Cal 75; *Budrinarain* v. *Sheo Koer*, L.R. 17 I A. 1: 17 Cal 512; *Majlis* v. *Munna Singh*, 84 P.R 1876 (See section 148, C P. C).

Abandonment of portion of claim —Where the plaintiff abandons a portion of the claim at the initial stage of the litigation, the trial Court cannot take action under section 10 (2) and dismiss the entire suit as this state of things was not considered when the Court Fees Act was passed into law; *Ram Prosad* v *Bhimon*, 27 All 151 24 All W N 198 1 All. L.J. 577; *Duni Chand* v *Aziz Khan*, 10 I C 207

Government is interested —The question whether court-fees should be paid or not is really a matter that is important from the view of Government and Government alone, *Bombay, Baroda and Central India Railway Co* v. *Millin*, 1931 A L J. 727: 133 I.C 465: 1931 A I R 659 (All): 1931 I R 673 (All.).

Procedure in suits for mesne-profits or account when amount decreed exceeds amount claimed

11. In suits for mesne-profits or for immoveable property and mesne-profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits

or amount so decreed shall have been paid to the proper officer.

Where the amount of mesne-profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

[For BENGAL only—

Substitution of new section 11.

For section 11 of the said Act, the following section shall be substituted, namely:—

Procedure in suits for mesne profits or accounts when amount found due exceeds amount claimed

"11. Where, in any suit for mesne-profits or for land and mesne-profits or for an account, the fee which would have been payable if the suit had comprised the whole of the relief to which the Court finds the plaintiff to be entitled exceeds the fee actually paid, the Court shall require the plaintiff to pay an additional fee equal to the amount of the excess, and if such additional fee is not paid within such time as the Court may fix, the suit, or if a decree has previously been passed therein, so much of the claim as has not been so decreed, shall be dismissed:

Provided that, where the additional fee is payable in respect of a portion of the claim which can be relinquished, that portion only shall be dismissed."]

[For MADRAS only in place of para. 2.

where a decree directs an enquiry as to mesne-profits which have accrued on the property during a period prior to the institution of the suit, if the profits ascertained on such inquiry exceed the profits claimed. no final decree shall be passed till the difference between

the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the claim for the excess shall be dismissed, unless the Court, for sufficient cause, extends the time for payment.

Where a decree directs an inquiry as to mesne profits from the institution of the suit, and a final decree is passed in accordance with the result of such inquiry, the decree shall not be executed until such fee is paid as would have been payable on the amount claimed in execution if a separate suit had been instituted therefor.]

NOTES

Amendment.—This section has been amended in Madras by Madras Act V of 1922 as indicated above and in Bengal by B C. Act VII of 1935

Application of the section.—The section applies to suits and not to appeals, *Balkaran Rai* v *Govinda Nath Tewari*, 12 All 129 19 All W N 139 F B This section also applies to the case of *mesne* profits for which an amount can be and has been claimed in the plaint and in respect of which some court-fees have already been paid, *Ram Krishna Bhikaji* v *Bhima Bai*, 15 Bom 416, *Vithal Hari Athvale* v *Govind Basudeb Thosar*, 17 Bom 41, and also applies to the case of past as well as future mesne profits where an amount was claimed and court-fees paid on the estimated amount of past mesne profits only, *Dwarkanath* v *Debendra Nath*, 33 Cal. 1232: 3 C L J. 94-95*n* , *Ijjatulla Bhuiya* v. *Chandra Mohan Bannerjee*, 34 Cal 954: 11 C W N 1133 6 C L J 255, *Kewal Kishen Singh* v *Sookhari*, 24 Cal. 173; and also to the case where compensation is claimed from the date of suit to the date on which, under the terms of the decree, possession should have been delivered, *Chedi Lall* v *Kiran Chand*, 2 All 682 F.B

Where it does not apply—to the case of an interest accruing upon a decree passed in a suit—which is not for *mesne* profits, nor for immoveable property nor for an account but simply a suit for money lent, *Krishnarav* v *Antaji Birupaksha*, 12 Bom H C. 227; *Bhawani Prosad* v *Kutubunnissa*, 27 All 559: 2 All L J. 263· (1905) 25 All. W N. 84.

Frame of suit.—A claim for possession and mesne profits may be united or may be brought separately and when

separate court-fee for the *mesne* profits claimed is not necessary, *Bebee Syedun* v. *Syud Allah*, W.R. 327, Gap Number—which was a case of succession to the office of a religious superior in a Mahomedan religious endowment.

Valuation.—Under the present Code of Civil Procedure (Act V of 1908), Order 7, Rule 2, paragraph (ii), the plaintiff *is to state approximately the amount of mesne profits* claimed, and in suits for accounts he is to state approximately the amount which will be found due to him on taking unsettled accounts

Every suit should state approximately the amount claimed and *ad valorem* court-fees must be paid on that amount, *Nand Kumar Singh* v. *Bilas Ram Marwari*, 3 Pat.L.J. 67: 1 Pat.L.W. 781: 40 Ind. Cas 579. But court-fees cannot be levied either in the original Court or the Court of appeal in respect of possible value of *mesne* profits *pendente lite*, *Bhupendra Kumar Chakrabarti* v *Purna Chandra Bose*, 43 Cal. 650: 13 C.L.J. 132: 24 Ind Cas. 232; *Bunwarilal* v *Daya Sankar*, 13 C.W.N. 815; *Ram Krishna* v *Bhimabai*, 15 Bom. 416; *Maiden* v. *Janakiramyya*, 21 Mad 371

Account suit.—When a plaintiff is required by the Court Fees Act to place a valuation on his claim and places a valuation which needs only to be approximately correct, it must not be arbitrary or manifestly inadequate The valuation can only be made approximately, and s 11, Court Fees Act makes provision for the payment of additional court-fees if the original valuation should be ultimately found to have been inadequate. But this does not mean that the plaintiff having valued his claim is entitled to select one or two items and to leave the rest for assessment under s 11 after the final decree has been obtained. The plaintiff has to value his suit for the purpose of determining jurisdiction, not necessarily exactly, but in an approximately correct fashion; and the court-fees are payable on the valuation so made, *Gauri Lal and others* v. *Raja Babu*, 1929 A I R. 626 (Patna): 11 P.L T. 561: 123 I.C. 634: 1930 I R. 362 (Pat.).

Final decree.—Under the present Code of Civil Procedure (Act V of 1908) the amount of *mesne* profits to be awarded is ascertained in the decree itself. See Order 20, Rule 12, C. P. C. Paragraph (ii) of that rule speaks of a final decree in respect of rents or *mesne* profits passed according to the result of the enquiry under clauses (a) and (c) of paragraph (i) of that rule; but no form of that final decree is given in the schedule

The procedure prescribed by Order 20, Rule 12 of the Code of Civil Procedure supersedes section 244 (a) (b) of the Code of Civil Procedure (Act XIV of 1882), *Dawood* v. *Rahaman*, 62 Ind. Cas. 175.

A decree directing that the plaintiffs should get *wasilat* from the defendants but the same should be ascertained through the intervention of a court-amin and in the course of execution proceedings, was an interlocultory decree only, so far as *wasilat* was concerned and did not become final until the amount of *wasilat* had been ascertained by the amin and until his report had been adopted or confirmed by the Court, *Hajon Manick* v. *Bur Singh*, 11 Cal. 17.

The memorandum of appeal against a final decree under Order 20, Rule 12 (2), C P C. in respect of subsequent *mesne* profits, is to be stamped with court-fee calculated *ad valorem* on the amount of *mesne* profits in dispute, *Pilla Balaramanaidu* v. *Pilla Sangannaidu*, (1922) 42 M L J 184· 45 Mad 280: 69 Ind Cas 722: 14 L W 730

Power of executing court—Costs—In *Lakshmanan Chettiar and others, R M C T C T Chidambaram Chettiar*, 57 Mad 303: 65 M L J 526: 38 L W 572: 1933 M W N 1116: 145 I C 946: 1933 A I R. 787 (Mad), the Madras High Court held that in view of the mandatory provision of sec 11, Court Fees Act, no direction as to payment of additional court-fees need be given in the final decree The costs so incurred by the decree-holder by reason of the payment of the additional court-fee may be deemed to be costs relating to execution and the executing Court has jurisdiction to pass any order relating to it See also *Perianan Chetty* v *Nagappa Mudaliar*, (1907) 30 Mad 32: 16 M L J. 543.

Section 11 requires the plaintiff to make up the deficiency in court-fees if on enquiry a larger amount than the approximate value is found due, therefore the successful plaintiff is to make up the deficiency found to be due after ascertainment of *mesne* profits On payment of the court-fees a regular decree comes into existence, *Collector of Etawah* v *Bindraban*, 1931 A.L.J. 413: 1931 A I R 538 (All).

Determination of the amount of mesne profits.— [illegible] *mesne profits Nature* [illegible] with *mesne* profits "the [illegible] of *wasilat* are not proceedings in execution of a decree in regard to any fixed sum, but merely a continuation of the original suit and carried on in the same way as if a single suit was brought for *mesne* profits by itself," *Puranchand* v. *Ray Radha Kissen*, 19 Cal 132 (136) F B

Proceedings for ascertaining the amount of *mesne* profits on an application for that purpose is not a proceeding "in execution of the decree" and therefore an application for delivery of possession of land decreed will not be barred by lapse of thr years although the claim to possession was barred, *Pryag Sing*

v *Raju Singh*, 25 Cal. 203, accepted by the Bombay High Court in *Uttam Ram* v. *Kishordas*, 24 Bom 149; *Harmonoje Narain Singh* v *Ram Prosad*, 6 C.L J. 462. But see *Ram Kishore* v. *Gopi Kantha*, 28 Cal 242; *Upendra Chandra* v. *Sakhi Chand*, 12 C W N 3, where an application for ascertaining the *mesne* profits was regarded as an application in execution.

Determination of amount cannot be left open to a future date—Before passing a final decree in a suit for accounts the Court is bound to go into accounts and fix definitely the amount which is payable by one party to the other. It cannot leave the examination of account to a future date and pass a decree for rendition of accounts to the extent of the sum found to have been received by the defendant without deciding what deduction, if any, he is entitled to make Nor can the determination of the amount of court-fees be left at the option of the plaintiff. Under s 11, Court Fees Act, the plaintiff should be called upon to pay court-fees on the difference between the sum decreed and the value tentatively fixed by him in the plaint, *Harry Percival Robson* v *Administrator-General, Punjab*, 11 Lah. 325: 30 P.L R. 503: 1929 A I R 753 (Lahore) 122 I.C 467.

Mesne profits subsequent to suit—"It is manifest that *mesne* profits antecedent to suit and *mesne* profits *pendente lite* stand on very different grounds In fact as regards the latter, there is no cause of action at the time of the commencement of the suit, and it is only by means of statutory provisions, framed with the obvious purpose of shortening litigation, that they can be awarded in the suit even though they accrued subsequent to the institution of the suit. The *mesne* profits antecedent to the suit have, on the other hand, accrued before the commencement of the suit, and although, therefore their amount may not be stated with absolute certainty, the amount can be mentioned with some approach to approximation When, therefore, a plaintiff institutes his suit for possession and *mesne* profits antecedent to the suit in a Court of limited pecuniary jurisdiction he may be rightly deemed to have limited his claim to the maximum amount for which that Court can entertain a suit," *Bhupendra Kumar Chakrabarti* v. *Purna Chandra Bose*, 43 Cal. 650: 14 C.W N. 506: 13 C.L J. 132 24 Ind. Cas. 232.

Stamps to be paid on antecedent mesne profits in appeals—As to *mesne* profits claimed prior to the institution of the suit, the memorandum of appeal must bear the same court-fees as in the plaint; but as to *mesne* profits accruing subsequent to the institution of the suit when the decree directs that the same be determined in execution, it is not necessary for the appellant to pay any additional court-fees on the memorandum of appeal, *Rudra* v. *Radhabhai*, 1883 P.J. 37. The court-fees that have to be paid

only upon the *mesne* profits claimed are antecedent to the suit and a plaint or memorandum of appeal is not liable to stamp duty in respect of *mesne* profits subsequent to the suit, *Bunwarilal* v. *Daya Sunkar Misser*, 13 C W N 815: 1 Ind. Cas. 670 See *Ram Krishna Bhikaji* v *Bhimabai*, 15 Bom. 416; *Maiden* v *Janakiramayya*, 21 Mad 371, but see *Pilla Balaramanaidu* v. *Pilla Sankannaidu*, (1922) 42 M L J 184 14 L W 370· 45 Mad 280 69 I C. 722, where it is held that on appeal from a final decree under Order 20, Rule 12 (2), court-fees are payable on *mesne* profits subsequent to suit

(*b*) *When the suit is instituted in a Court of limited jurisdiction* —The Calcutta and Bombay High Courts have held that if the suit be instituted in a Court of limited pecuniary jurisdiction, the amount of *mesne* profits to be awarded after it has been ascertained cannot exceed the pecuniary jurisdiction of that Court, *i e*, the amount of *mesne* profits that can be awarded by such Court is the maximum limit of pecuniary jurisdiction of that Court *minus* the value of the disputed property, *Golap Sing* v. *Indra Coomar Hazra*, 13 C W N. 493: 9 C L J 367: 1 Ind. Cas 86 5 M L T 360, *Hajibhai* v *Jamshedji*, (1913) 15 Bom. L R 1021 See also *Manna Lal* v *Samandu*, 46 P R 1906 94 P L R 1906, but see *Rameswar* v. *Dilu*, 21 Cal 550, *Panchanon* v *Kinoo*, 40 Cal 56 but in *Bidyadhar* v *Manindra*, F B 42 C.L J 49 53 Cal 14 29 C W N 869. 89 Ind Cas 726 1925 A I R 1076 (Cal), the Calcutta High Court held that the Munsiff can pass a decree for any amount in respect of *mesne* profits accruing pending suit For the view taken by Allahabad, Madras and Patna High Courts, see *Sundarsan Das* v *Ram Prosad*, 23 All 97 7 All L J 963, *Madho Das* v *Ramji Pathak*, 16 All 286 A suit was instituted in the Court of the Munsiff and was valued at Rs 1,400, but on investigation the amount was found to be Rs 8,000 by the commissioner appointed; the Munsiff directed that plaint be returned, the High Court directed the Munsiff to resume the trial of suit, *Arogya* v *Appachi*, 25 Mad. 543: 12 M.L.J. 35; *Putta Kamayya* v. *Rudhabhallavenkata*, F.B. 40 Mad 1: 32 M L.J. 221: 1917 M W N. 367: 39 I.C 439; *Sheikh Mohammad* v. *Mahtab*, (1917) 2 Pat L J 394: 41 I C 231. In *Musst Urchan Kuer* v. *Musst Kabutri*, 13 Patna 344: 15 P.L.T. 131: 148 I.C 579: 1934 A I.R. 169 (Pat) S B, the Patna High Court held that the pecuniary jurisdiction is ordinarily governed by the value stated by the plaintiff but such jurisdiction is not ousted by the Court finding that a sum exceeding its pecuniary jurisdiction is due. The Court in such cases can pass a decree beyond its pecuniary jurisdiction

In a suit for settlement of partnership accounts a Court is competent to pass a decree for an amount exceeding the limit of its pecuniary jurisdiction, provided it had jurisdiction

Biswas v Debendra Nath Tagore, (33 Cal. 1232: 3 C.L.J 94-95 N), in which it has been ruled that where a plaintiff asks for past as well as future *mesne* profits and paid court-fees on the amount claimed for past *mesne* profits only, the provisions of section 11 of the Court Fees Act were applicable."

Under s 11 of the Court Fees Act, the plaintiff should be called upon to pay court-fees on the difference between the sum decreed and the value tentatively fixed by him in the plaint, *Harry Percival Robson* v. *Administrator-General, Punjab*, 30 P.L.R 503 1929 A.I.R. 753 (Lah): 11 Lah. 325: 122 I.C. 467

(ii) *When the additional court-fee is to be paid*—The plaintiff must pay the excess amount of court-fees before executing the decree, *Arogya* v. *Appachi*, 25 Mad. 543: 12 M.L.J 35.

When the plaintiff sues for damages on the ground of fraud and gives an approximate valuation, then payment of additional court-fee can be made after the decree, *Raghavji Sati* v. *Annamalai Mudali*, 17 M.L.J 628

Court-fee is leviable on an application for ascertainment of future *mesne* profits under second part of section 11 of the Court Fees Act only after the amount of such *mesne* profits has been actually ascertained, *Ram Golam Sahu* v. *Chintamon Singh*, 93 I.C 939: 7 P.L.T. 313. I.L.R 5 Pat 361 · 1926 Pat. C.W.N. 49: 1926 A.I.R 218 (Patna) F.B

If in a suit for dissolution of partnership, the arbitrator makes an award exceeding the value of the suit, then the plaintiff is to pay court-fees on the difference of court-fees payable on the value of the suit and the court-fees on the award before he executes the decree, *Mahan Lal* v *Nihal Chand*, 152 I.C. 608: 1935 A.I.R 40 (Lah.).

"Where however a preliminary decree only makes provision for the subsequent determination of the *mesne* profits, the apt occasion for requiring a defendant to pay court-fees in this respect would be if and when the profits have been determined by a final decree," *Kandunni Nair* v. *Ithuni Raman Nair*, 53 Mad. 540: 58 M.L.J. 497: 1930 M.W.N. 291: 31 L.W. 826: 127 I.C. 128: 1930 A.I.R. 597 (Mad): 1930 I.R. 944 (Mad).

(iii) *Effect of non-payment of additional court-fees assessed.* —If the court-fees are not deposited within the time fixed, as provided by this section or within the time so extended, then the application for execution will be dismissed and no further application for *mesne* profits can be entertained as no such decree for *mesne* profits is in existence, *Kewal Kissen Singh* v. *Sookhari*, 24 Cal. 173: 1 C.W.N. 243.

When the amount is ascertained, then section 11 provides that the execution is to be stayed till the difference is paid

within a time to be fixed by the Court and if the Court omits to fix a time, then the execution is to be in abeyance and there is no bar to the execution being proceeded with as soon as the difference in court-fee is paid, *Subhagga Singh* v. *Shiva Nath Singh*, 1 All L J 350

A decree for partition was passed on 30th June 1900, onditional upon payment of court-fees and the decree was not) be executed till the 29th June 1903 The application to execute he decree was made on the 27th June, 1903, and it was dis- issed and the court-fees were not paid, *held*, that a second pplication was in time as it was competent to the Court to order at the execution should begin on court-fees being paid within certain time, *Nathu Bhai Kusandas* v. *Pranjivan Lalchand*, 4 Bom 189. 12 Bom L R. 13: 5 Ind Cas. 601.

The plaintiff can state any value, but exceution of the ecree, in case it exceeds the valuation, is not to proceed until he difference in court-fees has been paid, *Gobinda* v *Dayabhai*, ' Bom 22

Where the order to pay additional court-fees is contained n the concluding portions of the decree, the order does not orm part of the decree and no amendment is necessary when he Court orders the time to be extended The 1st part of the ection applies to such a case and the meaning of that part is hat execution is to be stayed till the additional court-fee is aid, and the Court should fix a time for payment of additional ourt-fees, *Perianan* v *Nagappa*, 30 Mad. 32: 2 M L T. 23: 16 M L J 543

Payment of additional court-fees under section 11 is not necessary in order that the execution of a mortgage decree by he appeal Court exceeding the amount claimed in the trial Court, may be proceeded with, *Ram Bhujhwan Prasad Singh* v. *Natho Ram*, 70 Ind. Cas. 483: 3 P.L.T. 146: 1922 A I R. 59 (Patna). See also *Thakan Chowdhury* v. *Lachhami Narain and others*, 14 Pat. 4: 15 P.L.T. 548: 152 I.C. 244: 1934 A I R. 571 (Patna), F.B.

Rejection of plaint does not preclude the plaintiff from presenting in the same Court a fresh plaint, properly framed and valued, *in respect of the same cause of action*, *Rachappa Subrao* v. *Shidappa Venkatarao*, 43 Bom 507: 24 C.W.N. 33: 17 A.L.J. 418: 25 M.L J. 298: 21 Bom. L R. 489: 50 I.C. 280: 25 M.L.T. 298 P C.

Penal sections must be strictly construed and a dismissal of a suit under its provisions cannot operate as a *res judicata*, *Muhammad Salim* v. *Nabian Bibi*, 8 All. 282.

If a decree for possession of immoveable property plus past and future *mesne* profits be passed then the decree-holder can

Biswas v Debendra Nath Tagore, (33 Cal. 1232: 3 C.L.J. 94-95 N), in which it has been ruled that where a plaintiff asks for past as well as future *mesne* profits and paid court-fees on the amount claimed for past *mesne* profits only, the provisions of section 11 of the Court Fees Act were applicable."

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If in a suit for dissolution of partnership, the arbitrator makes an award exceeding the value of the suit, then the plaintiff is to pay court-fees on the difference of court-fees payable on the value of the suit and the court-fees on the award before he executes the decree, *Mahan Lal* v. *Nihal Chand*, 152 I.C 608. 1935 A.I R. 40 (Lah).

"Where however a preliminary decree only makes provision for the subsequent determination of the *mesne* profits, the apt occasion for requiring a defendant to pay court-fees in this respect would be if and when the profits have been determined by a final decree," *Kandunni Nair* v. *Ithuni Raman Nair*, 53 Mad 540: 58 M.L.J 497: 1930 M W N. 291: 31 L.W. 826: 127 I C 128: 1930 A I R 597 (Mad): 1930 I.R. 944 (Mad).

(iii) *Effect of non-payment of additional court-fees assessed*—If the court-fees are not deposited within the time fixed, as provided by this section or within the time so extended, then the application for execution will be dismissed and no further application for *mesne* profits can be entertained as no such decree for *mesne* profits is in existence, *Kewal Kissen Singh* v. *Sookhari*, 24 Cal. 173: 1 C.W.N. 243.

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A decree for partition was passed on 30th June 1900, conditional upon payment of court-fees and the decree was not to be executed till the 29th June 1903 The application to execute the decree was made on the 27th June, 1903, and it was dismissed and the court-fees were not paid; *held*, that a second application was in time as it was competent to the Court to order that the execution should begin on court-fees being paid within a certain time, *Nathu Bhai Kusandas* v *Pranjivan Lalchand*, 34 Bom 189 12 Bom L R 13 5 Ind Cas 601

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Where the order to pay additional court-fees is contained in the concluding portions of the decree, the order does not form part of the decree and no amendment is necessary when the Court orders the time to be extended The 1st part of the section applies to such a case and the meaning of that part is that execution is to be stayed till the additional court-fee is paid, and the Court should fix a time for payment of additional court-fees, *Perianan* v *Nagappa*, 30 Mad 32· 2 M L T 23 16 M L J 543

Payment of additional court-fees under section 11 is not necessary in order that the execution of a mortgage decree by the appeal Court exceeding the amount claimed in the trial Court, may be proceeded with, *Ram Bhujhwan Prasad Singh* v. *Natho Ram*, 70 Ind Cas 483· 3 P L T. 146: 1922 A I R. 59 (Patna). See also *Thakan Chowdhury* v. *Lachhami Narain and others*, 14 Pat. 4: 15 P.L.T. 548: 152 I C 244: 1934 A.I R. 571 (Patna), F.B.

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Penal sections must be strictly construed and a dismissal of a suit under its provisions cannot operate as a *res judicata*, *Muhammad Salim* v. *Nabian Bibi*, 8 All. 282.

If a decree for possession of immoveable property plus past and future *mesne* profits be passed then the decree-holder can

take out execution of the decree in his favour for possession of the immoveable property irrespective of the question whether the *mesne* profits have or have not been ascertained or whether court-fees have or have not been paid on the *mesne profits*, *Ramalinga Sethapathi Ambalam* v. *Andiappa Ambalam*, 54 Mad. 980: 61 M L J 424: 34 L.W. 99: 134 I C. 181: 1931 AIR 717 (Mad.).

Effect of late payment of the deficit court-fees.—"It appears to me that whatever the date on which the applicants or their predecessors chose to comply with the Court Fees Act, in a suit for accounts, the date of the decree, for the purposes of Article 182 (of the Limitation Act), must be taken to be that indicated in section 205 (now Order 20, Rule7) of the Code of Civil Procedure, *Bhajan Behary Shaha* v. *Girischunder Shaha*, 17 C W N 959: 19 Ind Cas. 410.

Power of Court to enlarge time for payment of additional court-fees.—The Court has power to enlarge time originally fixed for payment of additional court-fees on applications for ascertaining the amount of *mesne* profits, *Golab Chand* v *Bahuria Rammurat Koer*, 13 C.L J. 432. (See section 148, C. P C.).

Power of appellate Court.—The appellate Court has no power to extend the time fixed by the original Court, nor reduce the amount awarded but no special procedure for dismissal for default in payment of court-fees under section 11 of the Court Fees Act is necessary so long as it is clear that the parties have had fair notice of the nature of the proceedings, *Nathersa Rowther* v. *Mahomed Rowther*, 28 Ind. Cas 890 See also *Priyanath Bachhar* v. *Meajan Sardar*, 24 C.L.J. 88: 29 I C. 571.

Abandonment of part of the claim.—Where the plaintiff abandons part of his claim at the initial stage of the suit, in respect of which court-fee already paid is insufficient, he is not compellable to pay the court-fees upon that claim under penalty of having his whole claim dismissed, *Ram Prosad* v. *Bhiman*, 27 All. 151: 24 All. W.N. 198: 1 All. L J. 577.

Where a suit for accounts and recovery of account papers was instituted in a Court of limited jurisdiction and it was found that the sum which ought to be awarded to the plaintiff exceeded the jurisdiction of the Court, the plaintiff ought to be called upon to relinquish the excess and thus place the case formally within the pecuniary jurisdiction of the Court of his deliberate choice; the Court may in such case remit the excess, or presume the excess to have been remitted, *Golap Singh* v. *Indra Coomar Hazra*, 13 C.W.N. 493 at page 499: 9 C.L J. 367: 1 Ind Cas. 86: 5 M.L.T. 360.

Where the Court insisted upon payment of additional court fees because a large amount was found due and the plaintiff offered to relinquish that portion of his claim but the Court refused holding that it had no power to allow such relinquishment and dismissed the suit, *held* that the order is erroneous, *Sellamuthu Servagar* v *Ramaswamy Pillai*, 12 M L J. 66 See also under heading "Reduction of claim and value" under Sch I, Art. 1 *infra*

PARAGRAPH II.

Application.—The final provision of section 11 of the Court Fees Act does not apply to the condition set forth in the 1st paragraph of that section, *Gonesh Chandra* v *Pramatha*, 11 Ind. Cas. 73.

The second part of s 11, Court Fees Act, has no application until the amount of *mesne* profits payable is determined in execution Part II, s 11, Court Fees Act, whether it applies to appeals or not, applies only to a claim for *mesne* profits accruing subsequently to the date of the suit, of which the plaintiff is unable to calculate the approximate value because he cannot say for how long a period he is likely to be kept out of possession, *Dhanukdhari Prasad Pandey* v *Ramadhikary Misser*, 142 I C 617· 1933 A I R 81 (Patna) · 12 Patna 188: 13 P L T 810. 1933 I.R 162 (Pat).

Construction.—In applying section 11 of the Court Fees Act to a suit for partition and *mesne* profits, the term "decree" in that section should be taken to refer to the final, and not to the interim decree in the suit Where in a suit for partition and *mesne* profits, the Court decrees the claim and awards a specific sum on account of such profits conditional on payment by the plaintiff of additional court-fees due in respect of the profits, the Court has no power under section 11, paragraph (ii) of the Court Fees Act Act to fix any time for payment and the only penalty which the plaintiff incurs in the event of his not paying the court-fees is that he cannot execute the decree until he pays the additional court-fees Their Lordships proceeded: "The 1st paragraph deals with a case where the profits are settled by the decree and the penalty under it for non-payment of the additional court-fee is, that the decree should not be executed till it is paid; under that paragraph the Court has no power to fix any time for payment, any order to that effect being mere surplusage......... The 2nd paragraph deals only with a case where *mesne* profits are ascertained in execution of the decree, the two paragraphs being mutually exclusive." "The word 'ascertained' implies that the exact sum of money representing the profits has been fixed. It is not sufficient for

the application of the section to show that a method had been indicated for the purpose of calculating those profits. . . . If the Court proposes to act under clause (2) it should ascertain the amount of profits in money and state the additional court-fees payable and fix a reasonable time for payment of it," *Natharsa Rowther* v *Muhammad Rowther*, 59 Ind Cas 385 See also *Pernanan Chetty* v. *Nagappa Mudaliar*, 30 Mad 32: 16 M L J 543: 2 M L T. 23

Suit—The word "Suit" in the last paragraph of section 11 does not mean the entire suit, *Fulchand* v *Bai Ichha*, 12 Bom 98, *Kewal Kissen Singh* v *Sookhari*, 24 Cal 173: 1 C.W.N. 243

Part execution of decree—The word 'suit' in the last part of paragraph (ii) of section 11 of the Court Fees Act does not mean the entire suit It means the claim in respect of *mesne* profits, *Kewal Kissen Singh* v *Sookhari*, 24 Cal. 173: 1 C W.N 243.

Where there are claims other than *mesne* profits, the plaintiff decree-holder may obtain execution of that other part without payment of additional court-fees for *mesne* profits He need not pay so long as he does not ask for *mesne* profits, *Fulchand* v. *Bai Ichha*, 12 Bom 98

Valuation.—The plaintiff need only state approximately the amount of *mesne* profits claimed in the suit. See Order 7, Rule 2 of the Code of Civil Procedure (Act V of 1908), *Bhupendra Kumar Chakravarti* v *Purnachandra Bose*, 43 Cal 650 13 C L J. 132. 24 Ind Cas 232, *Ijjatulla Bhuiya* v *Chandra Mohan Banerjee*, 34 Cal 954: 11 C.W.N 1135: 6 C.L.J 255, *Nand Kumar Singh* v *Bilash Ram Marwari*, 3 Pat. L J 67. 1 Pat L W 781 40 Ind. Cas. 579, see also *Gouri Prosad Koondoo* v. *Reily*, 9 Cal 112; *Jadoomoney Dabee* v. *Hafez Mahammad Ali Khan*, 8 Cal. 295 But see the following decisions:—*Baboojan* v *Baijnath Dutt Jha*, 6 Cal. 472: 7 C.L.R. 539; *Karoo Lal Thakoor* v *Taruck Nath Sein*, 7 W.R. 140; *Gooroo Das Ray* v. *Bungshee Dhar Sein*, 15 W.R. 67.

Increase of valuation.—Where the plaintiff brought a suit for *mesne* profits and valued his claim at Rs. 300, but on enquiry by the Commissioner Rs. 580 was found due, the trial Court passed decree for Rs. 223 only and the plaintiff appealed and valued the appeal at Rs. 357, *i e*, on the difference, *held*, that no second appeal lay to the High Court as the plaintiff did not amend his plaint and the value could not be increased without the plaint being amended, *Kali Kamal* v. *Fazlar Rahaman*, 15 C.W N. 454: 7 Ind. Cas 778.

Forum of appeal.—In case where the Court after investigation finds the valuation should be higher and orders return of the plaint, so long as there has been no acceptance by the

the application of the section to show that a method had been indicated for the purpose of calculating those profits....... If the Court proposes to act under clause (2) it should ascertain the amount of profits in money and state the additional court-fees payable and fix a reasonable time for payment of it," *Natharsa Rowther* v. *Muhammad Rowther*, 59 Ind. Cas. 385 See also *Perianan Chetty* v *Nagappa Mudaliar*, 30 Mad 32: 16 M L J 543 2 M L T 23

Suit—The word "Suit" in the last paragraph of section 11 does not mean the entire suit, *Fulchand* v. *Bai Ichha*, 12 Bom. 98, *Kewal Kissen Singh* v. *Sookhari*, 24 Cal. 173: 1 C.W.N. 243

Part execution of decree—The word 'suit' in the last part of paragraph (ii) of section 11 of the Court Fees Act does not mean the entire suit It means the claim in respect of *mesne* profits, *Kewal Kissen Singh* v. *Sookhari*, 24 Cal. 173: 1 C.W.N. 243.

Where there are claims other than *mesne* profits, the plaintiff decree-holder may obtain execution of that other part without payment of additional court-fees for *mesne* profits. He need not pay so long as he does not ask for *mesne* profits, *Fulchand* v. *Bai Ichha*, 12 Bom 98

Valuation.—The plaintiff need only state approximately the amount of *mesne* profits claimed in the suit. See Order 7, Rule 2 of the Code of Civil Procedure (Act V of 1908), *Bhupendra Kumar Chakravarti* v. *Purnachandra Bose*, 43 Cal 650. 13 C L J. 132: 24 Ind Cas 232; *Ijjatulla Bhuiya* v. *Chandra Mohan Banerjee*, 34 Cal 954 11 C W.N. 1135: 6 C.L J 255; *Nand Kumar Singh* v. *Bilash Ram Marwari*, 3 Pat. L J 67: 1 Pat. L W. 781: 40 Ind. Cas. 579; see also *Gouri Prosad Koondoo* v *Reily*, 9 Cal. 112; *Jadoomoney Dabee* v *Hafez Mahammad Ali Khan*, 8 Cal. 295. But see the following decisions:—*Baboojan* v *Baijnath Dutt Jha*, 6 Cal. 472: 7 C L R 539; *Karoo Lal Thakoor* v. *Taruck Nath Sein*, 7 W.R. 140; *Gooroo Das Ray* v. *Bungshee Dhar Sein*, 15 W.R. 67.

Increase of valuation.—Where the plaintiff brought a suit for *mesne* profits and valued his claim at Rs. 300, but on enquiry by the Commissioner Rs. 580 was found due, the trial Court passed decree for Rs. 223 only and the plaintiff appealed and valued the appeal at Rs. 357, *i e*, on the difference, *held*, that no second appeal lay to the High Court as the plaintiff did not amend his plaint and the value could not be increased without the plaint being amended, *Kali Kamal* v. *Fazlar Rahamar*, 15 C.W.N. 454: 7 Ind. Cas 778

Forum of appeal.—In case where the Court after investigation finds the valuation should be higher and orders return of the plaint, so long as there has been no acceptance by the

plaintiff of the order to make good the deficiency in court-fees, the original value assigned by the plaintiff must be taken as the value of the suit for the purpose of regulating the jurisdiction of the appellate Court, but after the plaintiff has accepted the order made, the value of the suit must be taken as being in accordance with the fee actually paid by the plaintiff, *Goswami Sri Raman Lalji Maharaj* v *Bohra Desraj*, 32 All 222: 7 All.L J 203: 5 Ind. Cas 875

Where in a suit for accounts, the plaintiff valued the relief approximately at Rs 600, but the Subordinate Judge passed a decree for Rs 30,830-9-2 and the plaintiffs paid additional court-fees, the defendant appealed to the High Court from the decree of the Subordinate Judge, *held*, that the appeal lay to the High Court because what the plaintiffs in this account suit demanded was the amount that might be found due to them, and so long as they claim Rs 30,830-9-2 to be decreed to them, they cannot be allowed to say that the subject-matter is only Rs 600 in value, *Ibrahim Issaji* v *Bejanji Jamsetji*, 20 Bom 265 But the case would be different if the suit is dismissed or the plaint rejected when the valuation would be the valuation made by the plaintiff, *Khusalchand* v *Nagindas*, 12 Bom. 675, (677), *Bhagvantrai* v *Mehta Bajurao*, 18 Bom. 40, *Gulab Singhi* v. *Lakshman Singhi*, 18 Bom 100 and *Bai Varunda* v. *Bai Manegavri*, 18 Bom 207

Where the plaintiff valued the land at Rs 2,800 and tentatively valued the claim for *mesne* profits at Rs 1,200 but on investigation the Subordinate Judge found the claim for *mesne* profits to be at Rs 2,305 held that as the total claim now exceeds Rs 5,000 in value, the value of the suit must be taken to exceed Rs 5,000 and the appeal lies to the High Court, *Jogendra Nath Maiti* v *Ram Gopal Das*, 103 I.C 639 (641): 45 C L J 462 1927 A I R 616 (Cal)

Where the plaintiff definitely fixes a certain sum as the amount of his claim, this must be considered as the value of the original suit and the appeal will lie accordingly but when he fixes a certain sum as the amount of his claim only approximately or tentatively and prays that the amount of his claim may be ascertained in the course of the suit, then the amount found by the Court to be due to him must be regarded as the value of the original suit for the purpose of determining the forum of appeal, *Gulab Khan* v *Abdul Wahed Khan*, 31 Cal 365: 8 C W N 233, applied in *Ijjatullah Bhuiya* v. *Chandra Mohan Banerjee*, F.B 34 Cal 954: 11 C.W.N. 1133: 6 C.L J. 255; *Ganga Ram* v. *Hakim Rai*, 15 Lah 512: 36 P.L R. 361: 151 I.C 703: 1934 A.I.R 506 (Lah) F.B.

In suits for recovery of money on unsettled accounts the value as determinable for computation of court-fee is the value

as given in the plaint, unless it is enhanced by an adjudication of Court in which case it is the latter sum which becomes the value on which the court-fee is to be computed and is also the value for the purpose of jurisdiction, *Kalu Ram* v. *Hanwant Ram*, 15 Lah 151 · 36 P.L.R 391: 151 I.C 641: 1934 A I R 488 (Lah), F B.

For account suits see *Buddha Mal* v. *Rallia Ram*, 9 Lah. 23: 9 Lah W N 1. 29 P L.R 320: 110 I.C. 631: 1928 A I R. 157 (Lah), where the High Court held that if the amount *found after enquiry exceeds the pecuniary jurisdiction* of the first appeal Court, then appeal lies to the High Court.

The approximate valuation made in an account suit determines the forum of appeal This valuation continues to determine the forum appeal even if on investigation the amount to be awarded is found to exceed the pecuniary limits of the District Court, *Harichand* v. *Madan Lal*, 31 P.L R. 536: 128 I C 491: 1930 A I R. 832 (Lah.): 1931 I R. 59 (Lah).

The memorandum of an appeal by the plaintiff from a decree awarding *mesne* profits but claiming a larger amount *between the institution of the suit and the delivery of* possession need not be stamped with *ad valorem* court-fees as no such fees can be demanded until the amount has been ascertained, *Sheodhin Singh* v *Narangi Lal Ram Marwari*, 11 P.L T. 703· 129 I.C. 662· 1931 I R. 118 (Patna).

Appeal from final decree during the pendency of appeal from preliminary decree—Where the plaintiff valued the relief for recovery of possession at Rs 1,020 and of the *mesne* profits antecedent to the suit at Rs 4,199-8-0 and the trial Court made a (preliminary) decree in favour of the plaintiff to recover possession of the land and to realize *mesne* profits to be subsequently ascertained and the defendant appealed and valued the appeal at Rs 5,219-8-0, the aggregate of the above sum and valued the appeal at Rs. 5,219-8-0, the aggregate of the above sums and paid court-fees *ad valorem* on that amount, the *mesne* profits were subsequently ascertained at Rs. 2,570-1-10 and a final decree for that amount was passed in favour of the plaintiff The defendant filed another appeal against the amount also while the appeal against the first decree was pending, *held*, it is not incumbent on the defendant to pay court-fees a second time and the High Court said, "If *mesne* profits had been decreed for a higher sum than what is claimed in the plaint and if the plaintiff had obtained a decree for such sum upon payment of additional court-fees, the defendant might have been called upon to pay the difference between the court-fees payable on the sum ultimately determined and the sum originally mentioned respectively," *Kanchan Mandar* v. *Kamala Prasad Chowdhury*, 16 C.L J. 564: 15 Ind Cas. 572 See *Kanti Chandra*

Tarafdar v *Radha Mohan Sikdar*, 33 C W N. 743: 1929 A.I.R. 815 (Cal.) where the High Court held that additional court-fees are to be paid on the increased amount decreed

See also under heading "Appeals from final decree during the pendency of appeal from preliminary decree' under Sch I, Art. 1 *infra*

Decision of questions as to valuation

12. (*i*) Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit:

(*ii*) But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section 10, paragraph (*ii*), shall apply.

[For **Bengal** only—

Amendment of section 12

12. *in paragraph (ii) of section 12 of the said Act, for the words and figures "and the provisions of section 10, paragraph (ii), shall apply" the following shall be substituted, namely:—*

and thereafter:—

(a) if the party required to pay is the appellant or petitioner, the provisions of sub-sections (2) and (3) of section 8B shall, so far as may be, apply;

(b) if the party required to pay is the respondent or the opposite party, the provisions of sub-section (2) of section 8B shall, so far as may be, apply, and, if such party fails to pay the fee required before the date fixed by the Court, the Court shall recover

the amount of such fee from him as a public demand.

Explanation.—*For the purposes of this section a question relating to the classification of any suit for the purpose of section 7 shall not be deemed to be a question relating to valuation."*]

NOTES

Effect of the Bengal Amendment—Reference to section 10 had to be deleted consequent on the repeal of that section under the Bengal Amendment Act.

The application of s. 8B requires the Court to stay proceeding with the appeal till the deficit has been realised. Clause (b) makes the provisions of the Public Demands Recovery Act applicable to the case of respondents who have not paid proper court-fees.

Application.—Section 12 has no application to a question of court-fees payable on a memorandum of appeal presented to a High Court but only applies to the fees payable in other Courts. It is true the High Court would have powers conferred by cl. (ii) but the fees dealt with are the fees paid in the lower Court, *Krishna Mohan Singha* v. *Raghunandan Pandey,* 1925 Pat. C.W.N 65. 6 P.L.T. 262: I L.R 4 Patna 336: 87 I C. 137: 1925 A I.R. 392 (Pat.) F.B.

"It has been ruled that the section has no application where the question for decision is as to the class under which a suit falls and not merely of valuation in that class," *Sunder Mal* v. *Jessie Caroline Murray,* 16 C L.J. 375 (377): 16 Ind. Cas 963, see also *Omrao Mirza* v. *Jones,* 10 Cal 599: 12 C L.R. 148; *Brojo Coomar Sen* v. *Eshan Chandra Das,* 3 C.L.R. 79. Section 12 of the Court Fees Act has no application, where the question raised before the trial Court was not a question relating to valuation for the purpose of determining the amount of court-fees payable on the plaint, but relating essentially to its jurisdiction to entertain the suit. "Section 12 should be strictly construed and it cannot be applied to bar an appeal where the question raised was one of the class under which the suit falls and not merely of valuation in that class The section was framed for fiscal purposes," *Peary Shah* v. *Surajmal,* 16 C L J. 371: 17 C.W.N. 503: 16 Ind Cas 575. See also *Venkata Ramani* v. *Narayanswami,* 1925 M.W.N. 276: 48 M.L.J 685: 87 I.C. 660: 1925 A.I.R. 713 (Mad.). Section 12 of the Court Fees Act has no application where the valuation is made by the Court for the purpose of determining the question whether the suit is within the pecuniary limits of the Court's jurisdic-

tion, and where on the basis of such valuation the plaint is returned for presentation to the proper Court, an appeal lies against the order made under Order 43, Rule 1 (a), C. P. C., *Chihu Kuri Nara Sinha Charyalu Garu* v. *Zemindar of Balliti*, 1919 M W N 599: 10 L W. 178. 26 M.L T. 153: 52 Ind. Cas. 1001.

The finality does not attach to a decision, where such decision as to court-fees, was arrived at only incidentally in the decision as to valuation for jurisdiction, section 12 being inapplicable to such cases, *Sikandar Shah* v. *Ghulam Nabi Shah*, 151 P W R 1918 47 Ind Cas 7

Section 12 has no application whatever to a case in which the appellate Court has to ascertain the nature of the suit and to determine whether it falls in a particular category. If after hearing the parties the Court found that the appeal was under-stamped it could have called upon the plaintiff to make good the deficiency within a certain time and if this was not done it could then have dismissed the appeal, *Musst Parmeshri* v. *Panna Lal and another*, 32 P L R. 244. 130 I C 643: 1931 A I.R. 378 (Lah) 1931 I R 323 (Lah)

Cross-objection—Section 12 has no application to a petition of objection under section 561 (Order 41, Rule 22), C. P. C. *Husan Bano* v *Nizamuddin*, (1893) 13 All.W.N. 85.

Rejection of plaint—The procedure set out in Order 7, Rule 11 of the Code of Civil Procedure, 1908, is not applicable to a case in which an appellate Court acts under section 12 of the Court Fees Act, 1870 In such a case rejection of the plaint is an appropriate remedy and the law enjoins a dismissal without option, though it may be that the result of the dismissal, from the point of view of *res judicata*, is the same as that of a rejection, *Pandit Brij Krishna Das* v. *Chowdhury Murli Rai*, 4 Pat L J. 703: 56 Ind Cas 316.

Construction.—Provisions of a fiscal statute should not be so construed as to furnish a chance of escape and a means of evasion, *Raj Rajeswar Jiu* v *Gati Krishna*, 39 C.L J. 217: 82 I C 128: 1924 A I R. 953 (Cal.); *Nanhe Lal* v. *Jogendra Chandra*, 28 C W N. 403: 39 C.L.J. 222 (228): 82 I.C. 297: 1924 A I.R 881 (Lah.).

Shall be decided by the Court—The words "every question relating to valuation......shall be decided by the Court in which such plaint is filed" do not carry with them the meaning that a distinct question or issue relating to valuation must be raised and a formal decision thereon passed by the Court of first instance before a Court of appeal can interfere, *Shama Soondary* v *Hurro Soondary*, 7 Cal 173: 8 C L R. 528. Se u *Bhusa Bakshi* v. *Kala Chand Roy*, (1926) 31 C.W.N 106 I

335: 1927 A.I.R 775 (Cal), where it was held that a formal decision is not necessary for the application of this sub-section and in case of deficiency the memorandum should be placed before the Court.

The expression 'shall be decided by the Court' does not mean that an issue shall be raised and decided by the Court. All that it means is that the Court, either the presiding officer or the ministerial officer who is charged with that duty, has to determine what the court-fee is. It cannot be said that where the ministerial officer whose duty it is to see whether proper court-fee is paid or not, decide what the proper fee is, his decision is not a decision of the Court * * * The act of the ministerial officer receiving the plaint etc is an act of the Court when a Court receives a plaint, petition or any other pleading and files it as properly stamped, its act amounts to a decision that the proper court-fee has been paid, *In re Lakshmi Ammal*, 49 M L J 608 (611, 613): 1925 M.W.N. 826: 91 I.C. 729: 1926 A.I R 96 (Mad).

SHALL BE FINAL.

"Final", meaning of—"I have no doubt that the term "final" in section 5 of the Court Fees Act has precisely the same meaning as the term "final" in section 12 of that Act. But the subject to which the term is applied in section 5 is different from that to which it is applied in section 12. In section 5 it is applied to a decision as "to the necessity of paying a fee or the amount thereof," whereas in section 12 it is applied to decision as to every question relating to valuation for the purpose of determining the amount of any fee chargeable under the Chapter (Chapter III) on plaint or memorandum of appeal, *Balkaran Rai* v. *Gobind Nath Tewary*, 12 All. 129 (152): 10 (1890) All W N 39 F B ; *Muhammad Sadik* v *Muhammad Jan*, 11 All 91 considered

If there be no doubt as to the class in which the suit falls, and the section of the Court Fees Act which applies to it, the decision of the first Court as to the valuation, which depends on the value of the property, is final; but if, there is a dispute as to the class in which the suit falls, that is to say, the section of the Court Fees Act which applies to it, an appeal will lie. *Govind* v. *Vitha Bai*, 87 I.C. 911: 1925 A.I.R. 435 (Nagpur). see also *Dada Bhau Kittur* v. *Nagesh Ram Chandra*, 23 Bom 486; *Pirya Shah* v. *Surajmal*, 17 C W.N 503: 16 C L.J 371: 16 I.C 575; *Sundar Lal* v. *Jestie C. Murray*, 16 C L J. 375: 16 I.C 963.

The provision as to finality attaches to the value of the suit and not to the value of the stamp to be used, *Raj Kristo* v. *Bama Sundari*, 23 W.R. 296.

The decision of the trial Court as to valuation is final only between the parties The Court of appeal can correct the valuation when the decision of the trial Court is to the detriment of public revenue, *Gajendra Nath* v. *Sulochana*, 39 C.W.N. 131: 60 C.L.J 201. 1935 A.I.R 338 (Cal.).

Decision as to valuation—"According to the terms of the section, it is only the decision of a Court on a question relating to the valuation of a suit that is final but the decision of the special Judge in this case does not dispose of any question relating to valuation far less any question relating to the valuation of a suit," *Upadhyaya Thakur* v. *Pershidh Singh*, 23 Cal 723 (729) F.B

Under section 12 of the Court Fees Act (Act VII of 1870) the decision of the Court of first instance upon a question of valuation, not affecting the question of category is final, *Wilayat Ali Khan* v. *Umardaraz Ali Khan*, 19 All 165 (168): 17 All W.N. 33, but see *Kanaram* v. *Komappan*, 14 Mad 169, where the trial Court erroneously estimated the value and the High Court held that it is not precluded by section 12 from revising it, and reversing the decree

An appeal would lie from the decision of a Court in respect of the class in which a suit falls, but no appeal shall lie from a decision in respect of the valuation of the suit in that class, *Dada* v. *Nagesh*, 23 Bom 486

If the appeal Court holds that the suit is rightly classified by the Court of first instance, the latter Court's valuation must be upheld as final, but if the appeal Court be of opinion that the suit has been wrongly classified, the decision of the lower Court as regards valuation must necessarily be set aside, should such valuation be different from what would have to be placed on the suit if rightly classified, *Mahna Singh* v. *Bahadur Singh*, 100 P.R. 1919: 50 Ind. Cas. 125; *Bawa Mangal Das* v. *Mohant Niranjan Das*, 56 P.R. 1895, *approved.*

Where the Court calls upon the plaintiff to make up court-fee on his plaint and the plaintiff contends that the court-fee already paid is sufficient, the High Court will not interfere in revision It is for the plaintiff to make up his mind whether he will pay or not If he fails to comply, the plaint will be rejected and unless the order is final under section 12 the plaintiff will have a right of appeal. If the order is final neither an appeal nor revision will lie, *Chuni Lal* v. *Roshan Lal*, 120 P.R 1919: 53 Ind. Cas. 427. No appeal lies against an order rejecting a plaint under Order 7, Rule 11 of the Code of Civil Procedure, when such [illegible]
Moni Koer v. *Basdeo* [illegible]
442. See also *Mani* [illegible]

A.I.R. 673 (P.); 1924 Pat C.W.N. 254: 5 P.L.T. 425: I.L.R. 3 Pat 390; *Ram Bhusan* v *Bachu Rai*, 14 Patna 220: 1934 A.I.R. 641 (Pat): 152 I.C. 1003.

The scheme of the Act appears to be that in the subordinate Courts under section 12 the trial Court alone has power to decide what is the proper valuation for the purpose of determining the fee payable on the plaint and the Appellate Court alone has the like power with regard to the memorandum of appeal presented in that Court, even if the trial Court has arrived at a different valuation, and each Court's decision is final subject to the provisions of the second clause of section 12, *Krishna Mohan Sinha* v *Raghunandan Pandey*, F B 1925 Pat C.W.N. 65 (78): 1925 A I R 392 (Patna) 6 Pat L T 262: I L R. 4 Pat. 336: 87 I C 137.

Objection to valuation.—Objection as to valuation was entertained in appeal Court in admitted cases of under-valuation In *Sheo Govind Rawut* v *Abhai Narayan Singh*, 5 B L R. Ap 17, the High Court *held*, that as the under-valuation is admitted the Court of appeal below was right in entertaining the question as to valuation as it affected the jurisdiction of the trial Court, —decided on April 26, 1870 In *Kaladdin Guru Bakas* v. *Raghoji*, 1 Bom H C A C 62), it was held that an objection as to improper valuation cannot be raised for the first time in appeal Court See also *Wilayat Ali Khan* v *Umardaraz Ali Khan*, 19 All 165 and other cases cited at page 31, *supra*

Powers of Taxing Officer.—The taxing officer can make an order only in respect of a document filed, exhibited or received in the High Court which are insufficiently stamped but not in respect of court-fees not paid in the lower Courts To such cases sec 12, clause (ii) is applicable, *Mithoo Lal* v. *Musst Chameli*, 1934 A L J 957. 150 I C. 653 1934 A I R. 805 (All), but in *Bidhu Bhusan* v *Kalachand*, (1926) 31 C W.N. 1045: 106 I C 335: 1927 A I R 775 (Cal.), the Calcutta High Court upheld a demand by the Taxing Officer as to court-fees not paid in the lower Courts The Hon'ble Judge said that the memorandum of appeal is to be registered in the High Court on payment of requisite court-fees for that Court and the memorandum of appeal is to be placed before the Hon'ble Court before the appeal is dealt with under Order 41, Rule 11, C P C

Order not final if the party had no notice.—The decisions of the Court in order to be final must be between parties to the suit on record and after they have had an opportunity of being heard, and not a decision based on the Munsarim's report before the filing of the plaint or the memorandum of appeal, and consequently before any parties are before the Court, *Amjad Ali* v. *Muhammad Ismail*, 20 All 11 (1897) 17 A.W.N. 157 F.B

Power of appellate Court.—Under section 12 (i) of the Court Fees Act, a decision on the question of court-fees by the Court of first instance is final between the parties though it can be re-opened by the Appellate Court itself under clause (2) of the section, only in the interest of revenue, *Tekana* v *Alagiri*, 25 Ind Cas 506. "Section 12 of the Court Fees Act was evidently framed for fiscal purposes as it is manifest from the second clause of the section which shows how a Court of appeal may review the recision of the primary Court upon a question of this character only when there has been a loss of the public revenue," *Peary Shah* v *Suraj Mal*, 17 C W N 503 · 16 C L J. 371 (374) 16 Ind Cas 575 See also *Shama Soondary* v. *Hurro Soondary*, 7 Cal 173 · 8 C L R 528

An appellate Court may, under second part of section 12 of the Court Fees Act, set aside an order as to the value of the property for the purpose of protecting the revenue and return the plaint for presentation to the proper Court, *Musst Ladli Begum* v *Ramdas and others*, 1925 A I R 488 (Patna): 1925 Pat C W N 167. 6 Pat L T. 448 · 90 Ind Cas 321

The High Court is not bound by the decision of the lower Court.—In deciding the amount of court-fees payable on the memorandum of appeal, the High Court is not bound by the decision of the Court of first instance, as to the stamp payable on the plaint, *Motigarvi* v *Pranjivandas*, 6 Bom 302; *Kashinath Narayan* v *Govindabin Piranji*, 15 Bom 82

Case of review.—The finality of the decision by the Court is thus taken away by the Act itself as by the second clause of this section the Court of appeal is authorized to demand additional court-fees when the question has been wrongly decided to the detriment of revenue; and by section 28 of the Court Fees Act, an appeal Court is authorized to demand additional court-fees whenever an insufficiently stamped plaint or memorandum of appeal has been received by the Court below through mistake or inadvertence.

The finality of the order of the 1st Court may also be set aside by the Court iself by review, or in revision by the High Court or on appeal by the appeal Court

The order of demand by the Court may be set aside on review by the Court making the demand either on the application by the plaintiff or its own motion, but before the order of demand fructified by non-compliance into a recorded order of rejection, because there is nothing in section 12 of the Court Fees Act to prevent a Court from reviewing its own orders; on the contrary section 151 of the Code of Civil Procedure (Act V of 1908) empowers it to do so, *Chandramoni Koer* v. *Basdc Narain Singh*, 4 Pat L J. 57: 49 Ind. Cas. 442 See also *Ma*

Lal v. *Durga Prasad,* 80 I.C. 667: 1924 A.I.R. 673 (Patna): I L R. 3 Pat. 930. 5 P.L.T. 425: 1924 Pat.C.W.N. 254 F.B.

'Case'.—A Court has jurisdiction to assess court-fees under sec 12 of the Court Fees Act. Therefore an order by the Court to pay deficit court-fees and allowing time within which to pay, is not a "Case" within sec. 115 of the Code of Civil Procedure and is not revisable, *Kotilingam Mudaliar* v. *Board of Commissioner, etc.,* 1927 A.I.R 1021 (2) (Madras): 104 Ind Cas 145. 52 M.L.J. 452: 39 M.L T. 220. *Contra,* see *Manilal* v *Durga Prasad,* 3 Patna 930 (941) where it was held that such decision is a decision of a case.

The determination of the question whether an additional court-fee should be paid or not marks the termination of a definite stage of the suit and settles the controversy between the parties on a particular issue Therefore the order decides a case and can be revised if there be a failure to exercise jurisdiction, *Lakshmi Narayan Rai* v *Dip Narain Rai,* 55 All 274: 1933 A L J 311: 1933 A.I.R. 350 (All.): 148 I C. 152.

Contra—In *Messrs Gupta & Co* v *Messrs. Kripa Ram Brothers,* 1934 A L J 381· 149 I C 1183: 1934 A.I.R 620 All), a Full Bench of the Allahabad High Court held the word 'case' is not an exact equivalent of the word 'suit'. Obviously it is something wider. It cannot be a case unless it is a proceeding which can be regarded as something separate and in a sense independent from the suit under hearing and the termination of that proceeding should be somewhat different from mere orders passed in the ordinary trial of suit itself." "Where the case is a proceeding which can be considered separate and distinct and finally disposed of by an order which terminates it, it may well be considered to be a case decided although the suit has not in one sense been completely disposed of."......"A mere decision as to the amount of the court-fees payable does not amount to a 'case decided' nor is it necessarily an irregularity in procedure or illegality or a refusal to exercise jurisdiction. (The case of *Buddhu Lal* v. *Mewa Ram,* 43 All. 564: 63 I C 15: 1921 A.I.R. 1 (All) approved].

Cases where the High Court interfered in revision.—*Bombay High Court.—Vithal Krishna* v. *Bala Krishna Janardan,* 10 Bom. 610: 1888 P.J. 339.

Calcutta High Court.—See *Ramrup* v. *Mohunt Sitaram Das,* 12 C L J. 211: 14 C.W.N. 932: 7 Ind. Cas. 22. Where the Court below, on an erroneous view of law, decided that no court-fees are payable, *held,* the High Court can interfere in revision under section 15 of the Indian High Courts Act, *The Collector of Malda* v. *Nirod Kamini Debya,* 17 C.W.N. 21: 15 I.C. 621; *Sundar Lal Marwari* v. *Jessie Caroline Murray,* 16

C.L J. 375: 16 Ind Cas. 963; *Sailendra Nath* v. *Surendra Nath*, 60 C.L J. 469: 39 C.W.N. 248.

Lahore Court—The order for rejection under Order 7, Rule 11 (*b*) is appealable as the order is a decree, hence a petition of revision of the order is incompetent, and section 12 does not bar an appeal against such an order, *Sada Kuar* v *Buta Singh*, 25 Ind Cas. 565. 80 P R 1914: 265 P.R. 1914: 167 P.W.R 1914

Madras High Court—When an erroneous order is made for payment of court-fees, the party affected need not wait till the final dismissal of the suit The High Court can interfere under section 115 of the Code of Civil Procedure, *Dodda Sonnckappa* v. *Sakrayya*, 36 Ind Cas 831. Where the lower Court wrongly orders the plaintiff to pay additional court-fees, the practice of the Madras High Court is to interfere in revision without leaving the aggrieved party to the cumbrous remedy of filing an appeal after the rejection of plaint for non-payment of court-fees demanded, *Sudalimuthu* v *Peria Sundaram*, 48 M L J 514: 1925 M W N 104 1924 A I R 722 (M) · 87 I.C. 25. Section 12 of the Court Fees Act does not prevent the High Court's power of revision, where it is not a mere question of amount or arithmetical calculation, *Konaran* v *Komappan*, 14 Mad 169.

Where a Court erroneously demands court-fees and refuses to proceed with the suit until additional court-fees are paid, it fails to exercise a jurisdiction vested in it, as a party is entitled to have his case tried if he has paid court-fees and its orders can be revised under sec. 115 C. P. C. The mere fact that an appeal would lie later [illegible] if stamp is nc[illegible] petition under [illegible] *Pandichi* v *Indram Rameswami Pandia Khalavan*, 108 I C. 539: 51 Mad 664: 55 M.L.J. 345: 27 L.W. 286: 1928 A I R. 416 (Mad.).

When it is a question of a principle to be applied to the levying of court-fees, the High Court can interfere in revision, *T. K M Alagappa Chetty* v. *Saminathan Chetty*, 1933 A I.R 367 (Mad.).

Where the order complained against relates only to a question of court-fees, the High Court can interfere where the order is unfavourable to the plaintiff The High Court does not interfere if the order is favourable to the plaintiff. The revisional jurisdiction of the High Court is not excluded by sec. 11 of the Suits Valuation Act. That section has the effect of curing the defect of a mistake in regard to jurisdiction and the section certainly does not say that the superior Court has no power to prevent beforehand a mistake from being committed

Kattiya Pillai v *Ramaswami Pillai (insane) by his wife, etc*, 56 M L J 394: 1929 M W.N. 286: 29 L.W. 584: 119 I.C 35: 1929 A.I.R. 396 (Mad). See also *Muhammad Elliyas* v. *Rahimee Bibi*, 56 M L J. 302: 29 L.W. 42: 114 I.C. 842: 1929 A I R 191 (Mad).

But if a decision in favour of the plaintiff be given then as the question can be gone into under sec. 12, Court Fees Act, the High Court will not interfere in revision. The Government unless a party to the suit cannot apply for revision, *Secretary of State* v *Raghunath*, 65 M L J. 25: 1933 M.W.N. 737. 144 I C 526: 38 L.W. 80: 1933 A I R. 506 (Mad).

Patna High Court—The Patna High Court has adopted the practice of the Calcutta High Court in interfering in revision with orders as to amount of court-fees payable, *Nauratan Lal* v *Stephenson*, 4 Pat L.J. 195 See also *Bankey Behary* v. *Ram Bahadur*, 4 Pat L.J 281: 44 I C 891: 4 Pat.L W. 281: (1918) Pat C W N 223; *Mani Lal* v. *Durga Prasad*, 80 I.C 667: 1924 A I R 673 (Patna) 1924 Pat C W N. 254: 5 Pat.L.T. 425: I L R 3 Pat 390

The High Court is competent to interfere with an erroneous decision of a Subordinate Court as regards the court-fees, but such an interference will be made only in exceptional cases, *i.e.*, when there is no other remedy open to the party or when non-interference with the order complained of will result in an irreparable loss to the party or when the order complained against is manifestly wrong or perverse and amounts to a denial of justice, *Maharaj Bahadur Singh* v. *Prithichand Lal*, 10 P L T. 464: 1929 A I R. 427 (Pat.): 119 I.C 78; *Ram Bhusan* v. *Bachu Rai*, 1934 A.I R. 641 (Patna): 14 Patna 220: 152 I C. 1003

But where after Court has ordered the deficiency in court-fees to be made good, the matter is brought up before the High Court by an application under section 115 of the Code of Civil Procedure, it was held that the order to make up the deficiency being an interlocutory order, the High Court will not interfere in revision as no irremediable harm will be done by the interlocutory order, *Musst. Lachmibati Kumari* v. *Nund Kumar Singh*, 5 Pat L J 400: 1 Pat L.T. 268: 56 Ind. Cas 649.

But in *Raghunandan Prasad Misra* v *Ram Charan Mandal*, *4 P.L J. 94*: 49 I.C 150: *1919 A I R. 425* (Patna), it was *held* that the High Court will not interfere in revision where another remedy is open to the party.

Forum of Appeal.—Where the plaintiff valued his claim at Rs. 2,100 but on objection by the defendant, the Court found that valuation ought to be Rs 24,000 and demanded additional court-fees, *held*, that appeal lay to the Judicial Commissioner as the plaintiff contended that the valuation is Rs 2,100 and

sec. 12 of the Court Fees Act does not bar such an appeal, *Prakash Chandra Sarkar* v. *Bishambar Nath Shahi*, 14 C.W.N. 343: 5 Ind Cas 18 See also *Goswami Sri Raman Lalji* v. *Bohra Desraj*, 32 All 222: 7 All L J. 203 · 5 Ind. Cas 875

Appeal.—In the following cases the *Calcutta High Court* held that there is nothing in section 12 of the Court Fees Act to prevent the plaintiff from appealing on the ground that the case falls in a different category, *i e*, governed by a different Article of the Court Fees Act than that found in the lower Court, *Ganga Monee Chowdhurani* v. *Gopal Chunder Ray*, 12 W.R 214, *Ajjodhya Pershad* v *Gunga Pershad*, 6 Cal 249 in which it was held, an appeal lies from an order rejecting a plaint as insufficiently stamped, *Omrao Mirza* v *Mary Jones*, 10 Cal. 55: 12 C L R 148, *H C Studd* v *Mati Mahto*, 28 Cal. 334; *Prokash Chandra Sarkar* v *Bishambhar Nath Sahi*, 14 C.W.N. 343 5 Ind Cas 18, *Pirya Sha* v *Surajmal Marwari*, 17 C W.N. 503. 16 C L J 371 16 Ind Cas 575; *Sundar Lal Marwari* v. *Jessie C Murray*, 16 C L J 375 · 16 Ind. Cas 963 See also *Taraprasanna Chongder* v *Nrisingha Murari Pal and others*, 51 Cal 216 28 C W N 683 · 39 C L J 212 · 81 I.C. 763: 1924 A.I R 731 (Cal)

Allahabad High Court took the same view as the Calcutta High Court in *Balkaran Rai* v *Govinda Nath Tewari*, 12 All 129: 10 All W N 39, modifying *Muhammad Sadik* v. *Mohammad Jan*, 11 All 91, *Amjad Ali* v *Mohammad Ismail*, 20 All 11: 17 All.W N 157 F B

Bombay High Court—The Bombay High Court, although it took a contrary view in *Narayan Madhavrao Naik* v. *Collector of Thana*, 2 Bom 145, yet in later decisions, has accepted the views of the other High Courts See *Vithal Krishna* v *Balkrishna Janardan*, 10 Bom 610 F B ; *Dada Bhau Kittur* v. *Nagesh Ram Chandra*, 23 Bom 486

An appeal lies from a decision on the question as to the class under which a suit falls, *Balakrishna Bhimaji* v *Ramakrishna Ganadhar*, 33 Bom L R 263: 1931 A I.R. 234 (Bom.).

The Lahore High Court.—See *Pir Mahammed* v *Ghulam Hyder*, 42 P.R. 1874; *Ganda Mal* v. *Mussammat Mahataho*, 67 P.P 1878; *Shah Alam* v. *Mahammad*, 2 P.R. 1889; *Bawa Mangal Das* v *Mohant Niranjan Das*, 56 P.R. 1895; *Musst Sada Kaur* v. *Buta Singh*, 265 P.L.R. 1914: 80 P.R. 1914: 167 P.W.R. 1914: 25 Ind Cas 565; *Mahna Singh* v. *Bahadur Singh*, 100 P.R 1919: 11 P.W.R. 1919: 50 Ind Cas. 142.

An order assessing court-fees is not appealable, *Ujagar Singh* v. *Sohan Singh and others*, 105 I.C 610: 1927 A.I R. 775 (Lah).

Sec. 12 of the Court Fees Act bars an appeal only where th dispute is about the proper valuation of the subject-matter

the suit and not when the question is as to which of the several Articles of the Court Fees Act applies to the facts stated in the plaint, but if the order directing payment of additional court-fee is incorporated in the decree, it becomes an essential part of the decree and is appealable as such, *Musst. Jintan* v. *Ahmad and another*, 106 I.C 817: 1928 A.I.R. 221 (Lah.).

The *Madras High Court* also took the same view in *Annamalai Chetti* v. *Lt Col J. C. Cloete*, 4 Mad. 204 The Chief Justice said at page 207: "In order to determine the coure-fees payable on a plaint or memorandum of appeal, it is necessary to decide to which of the several classes, recognised by the Court Fees Act, the suit belongs Where the fee prescribed for a particular class of suits is regulated by the value of the subject-matter of the suit, the further question arises, what is the valuation for the purpose of determining the amount of fee? In our judgment the terms of section 12 of the Court Fees Act ought not to receive a larger interpretation than what they fairly admit of. They do not declare the decision of the Court in which the plaint or appeal is filed, final, on all questions which may arise respecting the court-fees, but on every question relating to the valuation for the purpose of determining the amount of the fee. This may be a mere arithmetical calculation; it may involve the decision of a simple question of fact. On the other hand, apart from the valuation necessary to determine the amount of the fee, questions of much nicety may arise respecting the fee properly leviable on the suit, it is conceivable that the Legislature designedly prohibited appeal in the one case and permitted in the other." See also *Kanaran* v *Komappan*, 14 Mad. 169, *Champadan* v *Kummimal*, 4 Mad. L J. 173; *Venkata Ramani* v. *Narayanasami*, 1924 M W.N. 276: 48 M L J. 488: 87 I C. 660: 1925 A I R. 713 (Madras).

Patna High Court—When an order necessarily involves a decision of the category or class under which a suit falls, even though it incidentally decides a question of valuation, the order is appealable, *Chandramani Koer* v. *Basdeo Narain Singh*, 4 Pat.L J. 57: 1918 (Pat) C W.N. 264: 49 Ind. Cas 442.

A decision as to category is not final but a decision as to valuation is final, *Manilal* v. *Durga Prasad*, 3 Pat. 930: 80 I C. 667: (1924) A.I R. 673 (Patna): 5 P.L.T. 425.

In *Sidheshwari* v. *Ram Kumar*, 12 Patna 694: 14 P.L.T 180: 1933 A.I R. 234 (Patna): 144 I C. 684, the Patna High Court said: "The question of the sufficiency of the stamp on the memorandum of appeal must always be regarded as open until the appeal is finally heard and disposed of, in view of the provisions of the 1st part of sec 12, Court Fees Act, which directs that every question relating to valuation for the purpose of

determining the amount of any fee chargeable on a memorandum of appeal shall be decided by the Court in which such memorandum is filed; and it is suggested that at the final disposal of the appeal it is open to the respondent to object that the memorandum of appeal has not been properly stamped This view is certainly correct as applying to Courts subordinate to the High Court, and as applying to the High Court when considering the question of the sufficiency of the stamp in the Courts below under the second part of the section."

Oudh Chief Court.—See *Dwarka Prosad* v *Oudh Commercial Bank, Ltd*, 5 O C 319, *Gumani* v *Banwari*, 22 O.C 289: 54 Ind. Cas 733

Compliance with order.—The fact that a certain sum was put in compliance with the order of Court did not preclude the plaintiff from disputing the decision of the Court afterwards in appeal, *Mani Lal* v *Durga Prasad*, 3 Pat 930: 80 I C. 667: 1924 A I.R 673 (P). 5 Pat L T 425

CLAUSE II.

Power of higher Court to realize deficiency.—Where the trial Court disposed of the suit without any decision as to sufficiency of court-fees as the defendant did not raise any objection as to the sufficiency of court-fees but on appeal the District Judge demanded additional court-fees and on failure of the plaintiff to comply with the demand of the District Judge the decision of the lower Court was set aside, *held*, on second appeal, that the District Judge acted rightly as a formal decision of the trial Court is not necessary before an appeal Court can interfere, *Shama Sundari* v *Hurro Soondary*, 7 Cal. 348: 8 C L R 528, *Kalachand Sen* v. *Anundo Kristo Bose*, 22 W.R. 433, dissented from

Section 12 of the Court Fees Act was evidently framed for fiscal purposes, as is manifest from the second clause of the section which shows how
of the primary Court
there is a loss of pu
C L J. 371 · 16 Ind Cas 575: 17 C.W.N. 503

Although under section 12, clause (1) of the Court Fees Act, a decision on the question of court-fees by the Court of first instance is final between the parties, it can be re-opened by the appeal Court itself under clause (2) of this section in the interest of revenue, *Tekana Kavandan* v. *Alagiri Kavandan*, 25 Ind. Cas 506.

A plaint insufficiently stamped, was filed in the City Civil Court, Madras, and was accepted by the sheristadar who w

entrusted with the duty of checking the stamp of that Court as duly stamped The suit was dismissed and on appeal to the High Court the court-fees paid on the plaint was found insufficient and the Taxing Officer of the High Court demanded the deficiency to be made up, held that decision by the sheristadar amounted to a decision by City Civil Judge and the Taxing Officer was right in demanding the difference, *In re Lakshmi Ammal*, 49 M L J. 608: 1926 A I.R. 96 (Mad.); 91 I.C. 729: 1925 M W N 826.

When a memorandum of appeal to the lower appellate Court is insufficiently stamped, the deficit court-fee should be levied by the appellate Court, *Chenappa* v *Raghunatha*, 15 Mad 29 It is sometimes the duty of the appeal Court to see that proper court-fees were paid in the lower Court It is the duty of the High Court to see that proper court-fees are paid in the High Court and the Courts below from which the case came, *Narain Prosad* v. *Kameshwar Prosad Singh*, 3 Pat.L.J 101: 43 Ind Cas 489 The appeal Court is bound to require the (plaintiff) appellant to make good the deficiency, *Nihalchand* v. *Ghulam Muhammad*, 19 Ind Cas 856 (Punjab).

Attachment. *Recovery of court-fees by attachment of property*.—A Court has no power to direct recovery of the court-fees by attachment of the property of the party liable to pay the court-fees even if the court-fee in question was payable in law; still less after the Court finally parts with the seisin of the case, *Mohammad Ismail* v *Leyaquat Husain*, 1932 A L J 165: 140 I C. 191 (All). 1932 A I R. 316 (All.). See also *Ashgari Begum* v *Fashiuddin*, 1934 A L J. 820: 152 I C. 816: 1934 A I R 989 (All) (case of withdrawal of a suit).

Procedure.—The word "filed" in sec. 12 occurs only in the first half and not on the second half, and, even if there is room for the contention, that the phrase "whenever any such suit comes before a Court of appeal" is saitsfied when the memorandum is presented and before it has been accepted or registered, even so it is plainly much the better practice that these contentious questions as to documents in the lower Court should be dealt with when the memorandum of appeal has been accepted and registered and should not be dealt with as a condition of the acceptance or registration of the memorandum of appeal A Judge in refusing to permit an appeal to be filed unless the plaintiff pays further fees in respect of a document in the lower Court, follows a practice which is not to be commended and which is of an extremely doubtful nature, *Jalekha Bibi and another* v. *Danis Mahomed and others*, 33 C W.N. 952: 50 C L J. 164: 1930 A.I.R. 65 (Cal): *Bidhu Bhusan Baksi* v. *Kala Chand Ray*, 31 C.W.N. 1045: 106 I.C. 335: 1927 A.I.R. 775 (Calcutta).

Formal decision not necessary—It is not necessary for the application of sec 12 (ii) that there should have been a formal decision of the question of sufficiency of the court-fees in the Court below A suit comes before the appeal Court within the meaning of sec 12 (ii) of the Court Fees Act when the appeal is registered in such Court, *Bidhu Bhusan Bakshi* v *Kala Chand Ray*, 31 C W N. 1045: 106 I C 335 · 1927 A.I R 775 (Calcutta); *Jalekha Bibi and another* v *Danis Mahomed and others*, 33 C W N 952. 50 C L J 164 122 I C. 630 · 1930 A I R 65 (Cal).

Written statement—But where no court-fees have been paid on a written statement claiming a set-off, Court has no power to demand payment of additional stamp, *Muthu Emlappo Pillai* v *Vimker Maistry*, 36 Ind Cas 957. 10 Bur.L T. 242, but see *contra*, *Chenappa* v *Raghunatha*, 15 Mad 29, *supra*.

It is open to the appellate Court to demand additional court-fees from a party who has obtained a set-off in the trial Court without paying court-fees on his written statement and to allow the set-off on payment of such court-fees, *Maneklal Vadilal* v. *Chandulal Balabhai Shah*, 28 Bom L R 525. 94 I C. 646: 1926 A I R 343 (Bom)

The position of Court.—"If it were the appellant who was *in fault and failed to pay the full court-fee due from him* in the lower Court, this Court certainly could stay the hearing of his appeal and, if the deficient fees were not paid, could dismiss the appeal, and no doubt would do so; but where the appellant is not in fault, it would be most unjust that the respondent by failing to pay the court-fee due from him in the lower Court should have it in his power to prevent the appellant from having his appeal heard," *Narain Singh* v *Chaturbhuj Singh*, 20 All 362 18 All.W N 72

The Court of appeal when admitting an appeal is entitled to demand under the provisions of section 12 (2) the proper court-fees payable in the appellate Court as well as in the Court below by reason of the Judges in the Court below not having given a decision as to the proper amount of the court-fees payable, *Lakshmi Ammal, In re*, 1926 A I.R 96 (Mad.): 49 M L J. 608 · 91 I C 729: 1925 M.W N. 826

Undertaking to pay.—"The breach of an undertaking given to the Court by a litigant, pending proceedings, on the faith of which the Court sanctions a particular course of action or *inaction, is misconduct amounting to contempt. It is further* well settled that when a person is guilty of such contempt he places himself in a perilous *position so as not to be heard by the Court till he has purged his contempt*," *Raj Rajeswari Jiu* v *Krishna*, 39 C.L J 217 (220, 221): 82 I C. 128: 1924 A I.R. 953 (Cal.)

No demand can be made by Court after disposal of a case.

Calcutta High Court.—Where after dismissal of suit, the Court ordered the deficit court-fee to be paid by the plaintiff and on his default, the Court of its own motion ordered attachment of the property, *held*, that the Court had no jurisdiction to do so, *Jatra Mohan Sen* v. *Secretary of State for India*, 46 Cal. 520: 52 I C 435. 1919 A.I R 194 (Cal.).

Allahabad High Court—The powers conferred by section 54 (*a*) and (*b*) and sec 455 read with sec 582, C. P C, or by section 12 of the Court Fees Act, read with paragraph 2 of section 10 of the Court Fees Act, are intended to be exercised before the disposal of the case, and not after it has been decided finally so far as that Court is concerned, *Mahadei* v. *Ram Kisen Das and others*, 7 All. 528: (1885) 5 All.W N 140

Lahore High Court—The Court has no power to order the appellant to make up the deficiency discovered in the court-fees after dismissal of the appeal, *Abdullah* v. *Secy of State for India*, 82 I C 588 1925 A I R 131 (Lah); *Musst Durga Devi* v *Musst Parbati*, 34 P.L R 84: 141 I C. 175: 1933 A I R. 208 (Lah).

Oudh Court—The Court after the disposal of an appeal becomes *functus officio* and cannot entertain an application for an order to compel the appellant to pay additional court-fees, *Durga Prasad* v *Surat Singh*, 5 Luck 229· 6 O W N 757· 1929 A I R 483 (Oudh)

Madras High Court.—See *Govinda Nambi* v. *Parameswar Nambi*, 1 M.L J 528; *In re the Collector of Coimbatore*, 1933 M W N 330 37 L W 300: 1933 A I.R 321 (M): 142 I C. 25

Patna High Court—The Court cannot after disposal of a case demand court-fees from a party Sec. 28 of the Court Fees Act confers no such power on the Court, *Kedar Nath Goenka* v *Chandra Mouleshwar Prasad Singh Bahadur*, 11 Patna 532: 13 P L T. 304: 137 I.C 855· 1932 A I.R. 228 (Patna).

Patna High Court—If the appeal to the High Court be dismissed, owing to the appellant's failure to pay the deficit court-fees on the memorandum of appeal or for any other reason, the High Court has no power to call upon the respondent to make good the deficiency in court-fees payable by him in the lower appellate Court and has no power to restrain the respondent from executing the decree obtained by him as the High Court is *functus officio*, *Kumar Radhika Raman Prosad Singh* v. *Mussammat Janki Koer*, 4 Pat L J. 472: 1919 (Pat.) C.W.N. 276: 51 Ind. Cas. 756.

When it is intended to recover deficit court-fees from a respondent before the High Court, or in the lower Court. the

proper course is to admit the appeal for hearing and to take action under section 12 of the Court Fees Act read with section 10 of the Court Fees Act The Court is then in full seisin of the case and can punish the defaulting plaintiff or first appellant, as the case may be, by the dismissal of the suit or appeal Where, however, the appeal before the High Court is dismissed under Order 41, Rule 11, C P. C. no such action can be taken till the order of dismissal is reviewed and the appeal admitted for hearing, *Rajendra Narain Singh* v. *Ramdil Singh*, 5 Pat L J 508: 58 Ind Cas. 271.

Rangoon High Court—The provisions of the Court Fees Act relating to the levy of additional fees apply only to cases which are still pending and cannot be enforced in cases which have been finally decided, *Shanghai Life Insurance Co, Ltd* v. *Mrs Helen Constance Brown*, 9 Bur L T. 43: 32 Ind Cas. 531.

Realization of court-fees from respondent.—When it is discovered in second appeal that the memorandum of appeal to the lower appellate Court was insufficiently stamped but the respondent on being called upon to pay the deficit court-fee, did not make good the deficiency, *held*, that the proper procedure was not to dismiss the appeal by the respondent to the lower appellate Court but to stay the issuing of the decree, if any, of the High Court in favour of the respondent until such time as the additional court-fee due by him might be paid, *Narain Singh* v *Chaturbhuj Singh*, 20 All. 362: (1898) 18 All. W N 72

The Allahabad High Court in the case of *Madan Lal* v. *Jaikishen Das*, 25 All W N. 277: 1 All L J. 392, *held*, that if the respondent persists in refusing to pay the deficit court-fee then the appeal to the lower appellate Court will be dismissed. But this case was overruled in the Full Bench case of *Mohan Lal* v *Nand Kishore*, 28 All. 270: 23 All.W.N. 280: 2 All.L J. 839, where the same High Court *held*, that when it is discovered that the respondent in the High Court, when appellant in the lower appellate Court had not paid proper court-fees on his memorandum of appeal and has not paid the deficit court-fees when called upon to do so, the proper procedure would be to stay issuing the decree, if any, of the High Court in favour of the respondent and to dismiss the respondent's appeal in the lower Court.

The High Court cannot stop preparation of the decree after the judgment has been pronounced, *Kedar Nath Goenka* v. *Chandra Mouleshwar Prasad Singh Bahadur*, 11 Patna 532: 13 P L T. 304: 137 I C. 855: 1932 A I.R. 228 (Patna).

The proper procedure is for the Court to hold that th respondent is bound to pay deficit court-fees and if a decree passed in favour of the respondent in default no decree w issued until the deficit court-fee is paid, *Mohiuddin Sikd*

others v. *Ram Prasad Das and another* by Cuming and Ray, JJ. in S A. 337 of 1927 decided on 10th August, 1927 (unreported).

N.B.—The Bengal Act VII of 1935 makes the provisions of Public Demands Recovery Act applicable to such cases.

In *Shama Soondary* v *Hurro Soondary*, 7 Cal. 173: 8 C L R 528, the Calcutta High Court held that unless the plaintiff-respondent submits to the order of the appeal Court in complying with the order for payment of deficit court-fees then under sec 10, cl (ii) such a plaintiff loses the advantage she has obtained, *viz*, that her suit is liable to be dismissed. See *Kammathi* v *Kunhamed*, 15 Mad 288

But the Patna High Court has held in *Pandit Brij Krishna Das* v *Chowdhury Murli Rai*, 4 Pat L J 803, that if a plaintiff respondent fails to make good a deficiency in the court-fees paid on the plaint, it is competent to the appellate Court to call upon him, to pay the deficit court-fee, and, in the event of his failure, to dismiss his suit

When it appears to the High Court in a second appeal that the memorandum of appeal of the appellant in the lower appellate Court but who was respondent before the High Court was insufficiently stamped and that the deficiency was not made good by him, although he was called upon to do so, the High Court may not hear the counsel for the respondent as he was in contempt, *Baijnath* v *Dhani Ram*, 27 A L.J 1024: 1929 A.I.R. 77 (All) 117 I C 107

Refund of fees paid on memorandum of appeal

13. If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in section 351 [the first Schedule, Order XLI, Rule23] of the same Code, for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:

Provided that if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

NOTES.

Change in law.—According to section 158 of the Code of Civil Procedure (Act V of 1908) the reference to section 351 of the Old Code (Act VIII of 1859) is altered to that of the New Code (Act V of 1908) The original words were *"in section 351 of the same Code"*

Rejection.—Rejection of a plaint can be made under Order 7, Rule 11, *Of a memorandum of appeal,* See Order 41, Rule 3 Section 351 of the Code of 1859 (Act VIII of 1859) corresponds to section 562 of the Code of 1882 (Act XIV of 1882) and to Order 41, Rule 23 of the present Code (Act V of 1908) The section in the Code says that where the case has been disposed of on a preliminary point and that the decision of that preliminary point has been reversed on appeal, then the appeal Court is to remand the case for hearing to the lower Court

This section provides that in remanding such cases the court-fees paid are to be refunded

Construction. Preliminary point.

Please see an edition of the Code of Civil Procedure Some of the cases are given below

The words "preliminary point" have not been defined anywhere, but they mean and include all points or issues of fact or law the determination of which precludes the necessity for determining the other points or issues of fact or law and such determination disposes of the entire suit, *Sheoamber* v. *Lallu Singh,* 9 All 26, *Muhammad Allahadad* v. *Muhammad Ismail,* 10 All 289, *Matadin* v *Jumna Das,* 27 All 69; *Ram Narain* v *Bhagwandin,* (1884) 9 All 29

Preliminary point means a matter preliminary to the general determination of the suit which the parties bring before the Court for decision, *Krishnan Dutti* v *Muthan Palandi,* 22 Mad. 172

A decision where several issues remain undecided is one on a preliminary point, *Sushilamala* v *Joya Deman,* 40 L.W. 372: 1934 M.W.N 670: 151 I.C 721: 1934 A.I.R. 643 (Mad.); *Raman Nayar* v. *Krishnan Nambudripad,* (1922) 45 Mad 900 F.B

An order by an appeal Court directing addition of parties to a suit and remanding that suit for retrial is an order upon a perliminary point, *Jadav Govinda Singh* v. *Anath Bandhu Sahu,* 37 Cal 171: 5 I.C 998. A suit disposed of on a point which precludes consideration of other issues is a suit disposed of on a preliminary point, *Nirmala* v. *Golap,* (1933) 57 C.L.J. 473

An order of remand directing a retrial on an amended plaint, is an order under Order 41, Rule 23, C. P. C., *Mahammad Shafi* v. *Panchayet, Fatehgar through etc.*, 100 I.C 491: 1927 A I R 196 (Lahore).

A decision by the trial Court that certain documents are inadmissible in evidence and disposal by that Court of the suit on that issue alone without decision on other points raised, is a decision on a preliminary point and when such a decision is reversed in appeal and the case is remanded to the first Court, the court-fees paid on the memorandum must be refunded under sec 13 of the Court Fees Act, *Sher Mahammad* v. *Mian Ahmad and others*, 103 I C 298: 1927 A.I R 592 (Lahore). See also *Abdul Gafar* v *Muhammad Ziauddin*, 2 P.R. 1908: 12 P W.R 1908; *Bhadoi* v *Sheikh Manowar*, 4 P L J. 645.

Suit—The word 'suit' in sec. 13 includes an appeal. A remand by a Court of second appeal to the Court of first appeal, is a remand and the court-fees paid on the memorandum of appeal to the Court of second appeal is refundable, *Shanti Lal* v *Agha Dost Mohammad and others*, 54 All. 1081: 1932 A L J. 745 140 I C 56: 1932 A I R 641 (All).

Lower Court—The expression 'lower Court' includes the Court of first instance in the case of a remand by the High Court, *Kanhaiya Lal* v. *Musst Mahadei and others*, 54 All 523: 1932 A L J. 320. 140 I C 466 1932 A I R 550 (All). [In this case the remand was as to a part of the subject-matter and the High Court ordered court-fees proportional to that part to be refunded.]

[illegible] —In an application for refund it [illegible] consider whether the memorandum of appeal was or was not properly stamped, *Lakhi Narain Jagdeb* v. *Chowdhury Kirtibas Das*, 18 C L.J. 133: 19 I C. 971

Exception—An application for refund of court-fees is exempted from the levy of court-fees under sec. 19 (xx) of the Court Fees Act, *Jag Narain Pandey* v. *Mata Badal*, 54 All 790: 1932 A L J. 601: 142 I.C. 16: 1932 A I.R. 590 (All.): 1933 I R. 100 (All.).

Delay in making application—An application for refund of court-fees should be made within a reasonable time after the disposal of the case A delay of more than two years was considered to be too long. Refund of court-fees by Government is a matter of grace, *Jadubansi Sahay* v. *Barhamdeo Narayan*, 11 P.L.T. 476: 126 I.C. 294: 1930 A I R. 495 (Pat.).

Court in which the application is to be filed.—In a suit the trial Court held the suit to be for maintenance and realised deficit court-fees on that basis. The High Court held the suit to be one for declaration only. An application for refund

was held to be entertainable in the Court in which the plaint was filed, although no suit was pending before that Court, *Musst Deba* v *Secretary of State*, 1935 A L J 376. 154 I.C. 520: 1935 A I.R. 455 (All).

Refund on remand.—Where a suit has been dismissed on preliminary ground by the Court of first instance and the appeal was allowed with costs by the High Court on appeal, afterwards on the application of the judgment-debtors the decree was amended, the High Court remarked that an order ought to have been made for refund of court-fees and the amount paid in court-fees ought not to have been shown in the decree and the decree was ordered to be amended, *Surendra Nath* v *Girija Nath*, 15 C L J 659 15 Ind Cas 220 See also *Nand Kumar* v. *Bilas Ram*, 3 Pat L J 116· 1917 (Pat) C W N 377. *Bhausing Ragho* v. *Chaganiram Harachand*, 42 Bom 363: 20 Bom L R. 348: 45 Ind Cas 552 in which case the lower appellate Court having refused to grant refund on remand to it, the Bombay High Court held that the said order was illegal and revised the order under sec 115, C P C, *Goura Telin* v *Shriram*, 92 I C. 926. 1926 A I R 265 (N)

It is only when the appeal is remanded under Order 41, Rule 23 that the Court Fees Act permits refund of court-fees and not in other cases, *Jaganath* v *Maruti*, 12 N L R. 126: 36 Ind Cas 241 See also *Vithoba* v *Waman*, 42 Ind. Cas. 304 1918 A I R 271 (Nag), *Nand Kumar* v *Bilas Ram*, 3 Pat L J 116 43 Ind Cas 855 4 Pat L W. 100. 1917 Pat.C W N. 377

An order refunding court-fees can only be made under sec 13 of the Court Fees Act in a case where the remand is made under Order 41, Rule 23, C P. C, *Agent, Bengal Nagpur Railway Company* v *Behari Lall Dutt*, 52 Cal 783 (787): 29 C W N 614· 90 I C 426· 1925 A I R 716 (Cal). See also *Anantha Narayan* v *Harihar Pattar*, 1927 M W.N. 761 (case of a promissory note); *Mahomed Shafi* v *Panchayet, Fatehghar, etc.*, 100 I C. 49· 1927 A I.R 196 (Lah); *Sushilamala* v. *Sumanto*, 1934 M.W N 1070: 40 L W. 372: 151 I.C. 721: 1934 A I R 643 (M) (where the remand was erroneously ordered to be under sec 151, C P. C.).

In *Kanhaiya Lal* v. *Mahadeo*, 54 All 523: 140 I.C 466: 1932 A I.R. 550 (All.): 1932 A L J. 320: 1932 I.R. 667 (All.), the High Court allowed refund of the court-fees paid in the High Court and not of the court-fees paid in the lower Courts. See also *Musst Kaulpati Kuar* v. *Kashi Prasad Singh and others*, 1934 A L.J. 41: 1934 A I.R 106 (All.): 56 All. 526: 147 I.C. 686 F.B. The High Court also held that the court-fees paid on the memorandum of appeal to the lower appellate Court which dismissed the appeal could not be refunded.

When the decree [illegible] —
When the decree appe [illegible] ne
of the respondents but [illegible] n-
dents, *held*, that the successful appellants were not entitled to a certificate for refund under section 13 of the Court Fees Act, *In the matter of Bhagawanti*, (1916) 14 All.L.J. 671: 39 Ind Cas 28.

In *Musst Kaulpati Kuar* v *Kashi Prasad Singh and others*, 56 All 526: 14 A L J 41. 1934 A.I.R. 106 (All.): 147 I.C. 686 F B the trial Court passed a decree against three out of the six defendants The plaintiff appealed claiming a decree against the three defendants exonerated by the trial Court; the High Court in second appeal set aside the decrees of both the Courts and remanded the whole case to the trial Court and ordered refund of court-fees paid in the High Court only.

Refund on part remand—Where an appeal was remanded in part, the appellant is entitled to a return of the proportionate part of the stamp duty paid by him, *In the matter of the petition of Doorga Dass Dutt*, B L R Supp. Vol 511: 6 W.R. Mis 65: Sevaster, Vol 9, p 176 See also the 2nd paragraph to the section

Re-payment of court-fees on the reversal of the order of remand—Where a suit has been remanded by the lower appellate Court under section 562, C. P. C (Act XIV of 1882) and the court-fees on the memorandum of appeal and cross objection were refunded to the respective parties, on appeal the High Court, *held*, that the remand was bad and returned the appeal to the lower appellate Court for decision Here the appellants failed to repay the court-fees but the respondents repaid the stamp on their cross objection, *held*, that the respondents only were entitled to be heard, *Rajmal Motiram* v *Tapu Bin Kundlifa Matee*, 1898 P J 72

Partition suit—Court-fees cannot be refunded when the appeal Court after deciding on the merits of the appeal arising out of a partition suit remanded the case in order that the partition might be finally carried out *Held*, also that the memorandum should be stamped as an appeal from a decree, *Umrao Alikhan* v. *Abdul Subhan Khan*, 28 All W.N. 40: 5 All.L J. 545; *Nand Kumar Singh* v. *Bilas Ram Marwari*, 3 P.L.J. 116: 4 P.L W. 100: 1917 Pat.C.W N. 377: 43 I.C. 855.

Compromise.—No refund can be made when a suit is compromised, *The Land Mortgage Bank of India, Limited* v. *Gregory Paul Mahtus*, (March, 1870) 4 B.L R Ap. 96 See *contra*, *In the matter of Gujendra Narain Ray*, 11 W.R 158, (decided on 23rd February 1869) where the High Court held that if the petition of compromise is filed before the case is on the cause

list, the appellant is entitled to a full refund of court-fees (this is in accordance with the code then in force). But in *Musst. Seba v Secretary of State*, 1935 A L J 376 154 I C. 520· 1935 A.I R 455 (All), the Allahabad High Court ordered refund of court-fees after recording a compromise on the ground that the suit was one for declaration as regards maintenee and not for maintenance

No refund in cases of payment under orders of the Taxing Officer—There is no provision in the Court Fees Act which empowers a Court to order refund of any amount paid on demand by the Taxing Officer, *Puran Singh* v *Kesor Singh*, 30 P R. 1907, *Hitendra Singh* v *Maharajadhiraj of Darbhanga*, 7 P L T. 392 92 I C 626 1926 A I R 147 (Patna) But see *Indur Sen Singh* v. *Rikhai Singh*, 30 All 103. 28 All W N 31: 5 All L J. 18 where the Court said that refund ought to be made. [But the Revenue authorities may refund on application]

Court-fees paid in cash—The petitioner-appellant who was directed to pay deficit court-fees on his memorandum of appeal and who paid the fee in cash instead of in court-fee stamps, applied for refund of his money on the ground that when his memorandum of appeal has been rejected for non-payment of court-fees, the amount in deposit should be refunded The Patna High Court held that there is no provision in the Court Fees Act, or indeed anywhere else, for refunding of court-fees which has been deposited with the memorandum of appeal, or during the hearing of the appeal, when the appeal has been dismissed on the ground that deficit court-fees ordered to be paid has not been paid It can make no difference whatever that the sum deposited in Court undoubtedly as court-fees, was not converted into the shape of a stamp, *Janak Prasad* v. *Askaran Prasad*, I L R 6 Pat 602· 9 P L T 337 1928 A I R 29 (Patna): 105 I C 742

Refund.—In *In re Chidambaram Chettiar*, 57 Mad 1028: 40 L W. 295 1934 A.I R 566 (Mad): 1934 M W.N 678: 67 M.L J. 321· 152 I C 778, the Madras High Court held that the Court can order a refund (1) where the Court Fees Act applies; (2) where there is an excess payment by mistake, or (3) where on account of the mistake of a Court a party has been compelled to pay court-fees either wholly or in part; outside these cases it is doubtful if a Court can grant refund.

Order for refund under inherent power of Court—The cases of *Harihar Garu* v. *Anand Mahanty*, 40 Cal 365, was followed in *Chandra Dhari Singh* v *Tippan Prosad Singh*, 3 Pat L J. 452: 46 Ind. Cas. 271: 1918 Pat.C.W.N. 273, where it was held that although there is no provision in the Court Fees Act for refund of court-fees over-paid by mistake, the

High Court in the exercise of its inherent power vested in it can under section 151, C. P. C. order refund of the excess court-fee paid See also *Probhas Kumar* v *Nithar Lal*, 28 C.W.N. 928 1924 A I R 1054 (Cal) · 84 I.C. 278.

But in *Jagdish Chowdhury* v. *Radha Dubey*, 105 I C. 740; I L R 6 Pat 599, the Patna High Court thought that the inherent power is not to be exercised in every case

Court-fees paid in excess under a *bona fide* mistake was ordered to be refunded in *M. Muhammad Reza* v. *Raj Ballabh Nath Singh*, 107 I C 320 · 9 P L T. 240. See *Sasi Bhusan Majumdar* v. *Manick Lal Chandra*, 107 I.C. 825 (Patna).

The Subordinate Courts have inherent power to issue certificate for refund of excess court-fees paid by inadvertence, *In the matter of Chaube Munna Lal*, (1930) 52 All 546: 1930 A L J 805. 122 I C 188: 1930 A I R 471 (All).

The Court has jurisdiction to order refund of court-fees in cases which do not fall within secs. 13, 14 and 15 of the Court Fees Act (A case of withdrawal of the memorandum of appeal), *Mahammad Sadiq Ali Khan* v. *Ali Abbas and others*, 1933 A I R 170 (171) (Oudh) · 7 Luck 588 · 10 O.W.N 292 · 146 I C 789, *Jawala Singh* v *Ghulam and others*, 34 P.L R. 1: 142 I C 633 · 1933 A I R 351 (Lah) · 1933 I R. 226 (Lah.).

The court-fees may be refunded even in a remand under sec 151, C P Code, *Musst Gendo* v *Radhe Mohan*, 33 P L R 54: 136 I C 559: 1932 A I R 219 (Lah) · 1932 I R 239 (Lah); *The Central Bank of India* v *Firm Thakurdas Tulsi Ram*, 34 P L R 270 · 141 I C 400 · 1933 A I R. 135 (Lah); *contra*, *Punjab Ram* v *Jowaya*, 1933 A I R 47 (Lah.): 141 I.C. 425: 34 P.L R 252; *Ramchand* v *Bhagwan*, (1935) A.I.R. 8 (Pesh).

Refund after disposal of a case—After a case has been disposed of, the Court has no power either to refund or levy court-fees The power to do justice under sec 151 cannot be invoked in support of a claim for refund, *In re the Secretary of State*, 1933 A.I.R 321 (Mad): 37 L.W. 300: 1933 M W.N 330: 142 I C 25.

In *Girish Chandra Mali* v. *Girish Chandra Dutta*, 36 C.W.N 190: 54 C.L J. 68: 133 I C. 689: 1932 A.I.R. 6 (Cal): 1931 I.R. 737 (Cal.) the Calcutta High Court ordered refund of excess court-fees paid even after disposal of the appeal before it on the ground that justice should be done. See also *Musst Seba* v. *Secretary of State*, 1935 A.L J. 376: 154 I.C. 520: 1935 A.I.R 455 (All.) where the application for refund was treated as an application for review.

Refund of excess stamp paid.—Where the stamps on a memorandum of appeal were over-paid the High Court directed

the Taxing Officer to issue necessary certificate to entitle the appellant to apply to the revenue authorities to obtain a refund of the excess paid in court-fees, *Harihar Garu* v. *Ananda Mahanty*, 40 Cal 365. 20 Ind Cas 498 See also the case of *In the matter of G. H Grant*, 14 W R. 47. See also *Miss Hirabai Burjorji Cowasji* v. *Fakir Mahomed Vali Mahomed Khoja*, 102 I C 193. 1927 A I R. 192 (S) So where a party, in appealing against as an appeal from a excess stamp duty 16 M L J 30

An appeal Court may refund court-fees paid in a claim for *mesne* profits, if the appellant can make out a case that the *mesne* profits have been over-estimated, *Deonandan Misra* v *Ganga Prasad and others*, 8 Patna 906 10 P L T 622: 120 I C. 312· 1929 A I R 731 (Patna)

A claim for refund of court-fees, after dismissal of an appeal on the ground that no appeal lies, based on the plea that the execss payment was made on the wrong advice by the Stamp Reporter and that the party acted on the advice without questioning it, was negatived by the Patna High Court, *Jagadish Chowdhury* v *Radha Dubey*, 105 I C 740: I L R 6 Patna 599: 1928 A I R 35 (Pat); *Mirza Muhammad Reza and another* v *Rajballabh Nath Singh and another*, 9 P L T 240: 107 I.C. 320

The High Court has inherent power to determine judicially the court-fees payable and to order refund of excess fees paid in proper cases and then to issue certificate for refund It still lies with the Revenue authorities to decide whether or not they will refund the excess fees in the circumstances of the case, *Thammayya Naidu* v *Venkataramanamma*, 55 Mad. 641· 62 M L J 541. 35 L W 618: 1932 M W N 420. 139 I C. 131: 1932 A.I R 438 (Mad.). See also *Vijoyalakshmi Ammal* v. *K R Srinivasa Iyengar*, 57 Mad 542: 66 M.L J. 35: 1934 M.W N. 7: 38 L.W. 983· 148 I C. 1108: 1934 A.I.R. 84 (Mad.) where the Madras High Court held that the only certificate the Court can grant is that the court-fees have been paid in excess. See also *Raoji Bhiosangji* v. *Collector, Amraoti*, 1934 A.I.R. 263 (Nag).

Refund on return of plaint—The High Court has inherent power to order refund of the value of stamps on a memorandum of appeal which has been returned as not sufficiently stamped, *Bhubaneswari Prasad* v. *Kishen Dayal*, 72 I.C. 405 (Patna); *Lachmi Prasad* v *Secretary of State for India*, 11 P.L.T. 711: 131 I.C 530: 1931 A I.R. 39 (Patna).

Refund in the case of an appeal against preliminary decree—A refund certificate cannot be granted by Court for court-fees

paid on an appeal against a preliminary decree, *Nand Kumar Singh* v. *Bilas Ram Marwari*, 3 Pat L J. 116: 4 Pat L.W 100: 1917 (Pat) C.W N. 377: 43 Ind Cas. 855

Appeal from final decree—When an appeal was pending from the preliminary decree, it was not necessary for the mortgagee to file another appeal from the final decree The court-fees paid on the memorandum of appeal from the final decree was ordered to be refunded, *Swami Dayal* v. *Muhammad Sher Khan*, 1925 A I.R 39 (Oudh): 83 I.C 829; *Khanhaiya Lal* v *Tribeni Sahai*, 36 All 532· 12 A L J. 876: 24 I C. 827. The Calcutta High Court allows the memorandum of appeal to be corrected by making it an appeal both from the preliminary and final decrees, *Nambala* v *Ichchamoyi*, 40 C L J. 291

Withdrawal of appeal—Refund—In *In re Chidambaram Chettiyar*, 57 Mad 1028: 40 L W 295: 67 M.L J 321: 1934 M W N 678: 152 I C. 778: 1934 A I R 566 (Mad.), the Madras High Court ordered refund of court-fees on a memorandum of appeal withdrawn by the appellant; *Mahammad Sadiq Ali Khan* v *Ali Abbas*, 7 Luck 588: 146 I C 789: 1933 A.I.R 170 (Oudh)

Refund of court-fees paid under order of Court—The plaintiff paid court-fees under orders of Court on a valuation made by it; subsequently after hearing the parties the trial Court dismissed the suit, on appeal the High Court accepted the plaintiff's valuation but refused to grant a certificate of refund holding that its powers are limited to cases specified in sections 13, 14, 15 and therefore it cannot refund the excess amount paid. *In the matter of the petition of Maulvi Synd Zoynooddeen Hossein Khan*, 11 B L R. A C 370

Contra—Where under order of Court excess court-fees were paid, the High Court on appeal ordered excess court-fees paid to be refunded, *Bebee Syedun* v *Synd Allah*, W.R Gap Number 327 (329); *In the matter of G. H Grant*, 14 W R. 47; *Indar Sen Singh* v *Rikhai Sing*, 30 All. 103· 28 All.W N. 31: 5 All L.J 18; *Katchi Rowther* v *Naina Mohammad*, 28 Ind Cas 300; *In re Chidambaram Chettyar*, 57 Mad 1028, *supra*

Refund on amendment of plaint—The fact that on amendment of a plaint by which the original prayers are altered and rendered unnecessary, by itself, would not entitle the plaintiff to a refund of court-fees paid on original prayers, *Ramakrishnayya* v. *Seshamma*, 41 L W. 488: 1935 M.W N. 406: 1935 A.I.R 346 (Mad.).

Mistake of party, no refund, use of wrong stamp.—Where the final decree in a partition suit was drawn up, by mistake, on a court-fee stamp, instead of on a non-judicial stamp and the plaintiff asked for refund, *held*, that the plaintiff is not entitled

to a refund, as a matter of right, *Maulavi Rafiuddin* v. *Syed Ahmed*, 12 C L J 324: 7 Ind Cas 94: 14 C.W N. 1101.

Mistake of Counsel—Where an appeal was filed *forma pauperis* and the application was rejected and then the pauper appellant stamped his memorandum of appeal with proper court-fees, but it was found that the period for appealing has expired, whereupon counsel for the pauper appellant asked for a refund, *held*, that the counsel having been heard in support of the appeal so stamped, no refund can be granted, *S Annamallay* v *O. M. R. M Chetty Firm*, 22 Ind Cas 884· 7 L B R. 90; but in *J. C. Galstaun* v *Janakinath Roy*, 38 C W N. 185: 152 I C. 215: 1934 A I R 615 (Cal) the Calcutta High Court ordered refund where the appeal was barred by time owing to negligence of advocate.

Refund of excess stamp (paid by mistake)—The Government has directed that excess court-fees stamp put in by mistake in matters of administration should be refunded, *I G Resolution* No 132, dated the 11th January, 1888 The Government has directed that excess court-fee stamps put in by mistake in matters of administration should be refunded. *I G Notification No.* 2025 of 1872, dated 17th September, 1872, p 782

Refund of excess stamp in Probate, Letters of Administration, etc—See sections 19A, 19B of the Court Fees Act

Other cases of refund—Refund under Presidency S C. C. Act.—See Presidency S C C Act, section 73

Refund under Madras City Civil Courts Act—See section 13 of that Act, *I G Notification* No 4650, dated 10th September, 1889, dated the 14th September, Part I, pages 506-509.

As to refund of fees paid on application to the Chief Court or the Court of the Financial Commissioner of the Punjab for the exercise of its revisional jurisdiction under the Code of Civil Procedure—see the Punjab Courts Act, 1884 (18 of 1884), section 72, as amended by the Punjab Courts Act, 1899 (25 of 1899), Punjab and North West Code.

Full value to be refunded.—Under section 13 of the Court Fees Act, 1870, an applicant is entitled to receive from the Collector the full amount of court-fees paid on the memorandum of appeal without any deduction, on production of the certificate of the appellate Court, and no further sanction is necessary for the refund of the court-fees, *B. G Resolution* No. 8912, dated 13th December 1890; *I G. Resolution* No. 132, dated the 11th January, 1888.

Revision.—If a Court having jurisdiction to decide on an application for refund, fails to do so, then the High Court can revise the order, *Musst, Deba* v. *Secretary of State*, 1935 A.L J. 376: 154 I.C. 520: 1935 A I.R. 455 (All.); *Bhansing Ragho* v

Chaganiram Harachand, 42 Bom. 363: 20 Bom L.R 348: I C 552.

Return of stamps.—In *Raoji Bhiosanji* v. *Collector, Amraoti*, 31 N L R. 82: 1934 A.I.R. 263 (Nag.), in a case of affixing of wrong stamps the Nagpore Court held that in that the applicant had no absolute right of refund and that the stamps could only be returned as a matter of grace, if the Court was of opinion that there was a *bona fide* mistake; when once the plaint has been admitted, the stamps should be cancelled and there is no question of returning them. See also *Jaungi Pandey* v. *Saudagar Singh*, 131 I.C 532: 1931 A.I.R. 113 (Patna).

Refund of fee on application for review of judgment

14. Where an application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

NOTES.

Object of the section.—This section was enacted in modification of section 377 of the then Code of Civil Procedure By the latter, on the application for review of judgment presented after ninety days from the date of such judgment, the same fee was levied as if it were a plaint in a suit, whilst an application made within ninety days was subject only to the court-fee chargeable in ordinary applications. In many cases when the delay had accrued through the laches on the part of the applicant, this rule had been found to entail hardship; and the measure of of relief provided by this section, under which a refund of the difference between the amount paid and that which would have been payable had the application been presented within ninety days, might be obtained in such cases, was thought to be called for, *India Gazette, dated 26th February, 1870*

N. B—See section 114 and Order 47 of the Code of Civil Procedure (Act V of 1908).

According to Art. 5 of Schedule I of the Court Fees Act, half the fee leviable on the plaint or memorandum of appeal is to be paid, if the application is presented within the ninetieth day from the date of decree, and according to Art. 4 of the same schedule, full court-fee is to be paid if presented on or after the

ninetieth day. Applications for review of judgments are to be stamped with court-fees actually leviable on the memorandum of appeal in which the judgment sought to be reviewed, was passed irrespective of the relief claimed, *M C Husania* v *Sahib Nur*, 20 Ind. Cas 3 254 P L R 1913

Computation of time—In computing the 89 days from the date of the decree, the time during which the Court is closed is not to be excluded and an application cannot be filed on half court-fee on the re-opening day if the Court be closed on the 89th day *Held* also, reference to Limitation Act cannot be made, that Act not being in *Pari materia* with the Court Fees Act, *Kota*, 9 Mad 134. Where the application for review of judgment was filed on the re-opening day of the High Court after vacation, but after the ninetieth day fell during the vacation —*held*, that full fee leviable on the memorandum of appeal must be paid in the first instance, but that the Court, if satisfied, might direct a refund of one half of such fee *In re Doorga Prosanno Ghosh*, 9 C L R 479

An application for review of judgment was presented on the ninetieth day as the previous day was a Sunday, should be stamped with full fee leviable on the plaint or the memorandum of appeal To such cases under the Court Fees Act, section 5 of the Limitation Act of 1877 has no application Section 10 of the General Clauses Act, being applicable only to Acts of the Governor-General in Council and Regulation made on or after the 14th January, 1887, is inapplicable to such cases. The general principle that a party may be taken to have done an act within the prescribed time, if he has done it on the first day the Court is open after expiry of the holidays within which the prescribed time terminated, is inapplicable in view of section 14 of the Court Fees Act, *Sayera Bibi* v. *Bhutnath Haldar*, 15 C L J 505· 15 I C 455.

For other cases see also under Arts, 4, 5 of Schedule I of this Act

Refund.—When an application for review was filed with half court-fees, the High Court said, "The position is that if the strict letter of law be followed, the applicant should be called upon to pay one half of the court-fee in addition to what he had paid before, and we should then forthwith grant a certificate under section 14 for a refund of this sum. This would be an idle formality which would needlessly delay the consideration of this application on the merits" The application was then heard on the merits, *Nowrang Singh* v. *Janardan*, 39 C L J. 344: 1924 A I.R. 994 (Cal): 80 Ind Cas 794.

Stamp duty paid on a petition of the nature of an applicatio for review, may be refunded where there is no final decisi

Prosanna Chunder Ray Chowdhury v *Nabo Kristo Chatterji*, 18 W.R. 434.

Refund where Court reverses or modifies its former decision on ground of mistake

15. Where an application for a review of judgment is admitted, and where, on the rehearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the [application] as exceeds the fee payable on any other application to such Court under the Second Schedule to this Act, No. 1, clause (*b*) or clause (*d*).

But nothing in the former part of this section shall entitle the applicant to such a certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

NOTES

Amendments.—The word "application" was substituted for the original words "plaint or memorandum of appeal" by the Court Fees Act, (Amendment Act, 1870, XX of 1870), sec. 1.

Elements.—In order to attract the operation of section 15 of the Court Fees Act, the conditions requisite are that there should be an application for review of judgment, that it should *have been admitted, that on the rehearing, the Court should* have reversed or modified its former decision on the ground of mistake in law or fact and that such reversal or modification is not due to fresh evidence which might have been produced at the original hearing, *Prabhas Kumar* v. *Nithar Lal*, 28 C W N. 928: 1924 A.I.R. 1054 (Cal.): 84 I.C 278.

The requirements of s. 15 are perfectly definite (1) the admission of the application for review of judgment irrespective of the correctness of the grounds of admission: (2) a reversal or modification of the former decision on the ground of mistake in law or in fact, such reversal or modification not being due wholly or in part to fresh evidence which might have been produced at the original hearing. Therefore, if the application for review was admitted and the judgment modified without admission of fresh evidence, the party is entitled to relief under s 15

of the Court Fees Act, *Tej Narain Singh* v. *The Secretary of State*, 10 Patna 649 133 I.C. 83: 1932 A I R. 86 (Patna).

Object of the section.—It was proposed through the provisions of the section to guard against the increased fee working harshly by allowing a refund of the enhanced amount payable under its operation, where the result of the application was the reversal or modification of the previous judgment on such grounds as amounted to an admission of the Court's order, *India Gazette*, 26th February, 1870

Refund.—The power of Court to refund is limited to sections 13, 14, 15 and if the case does not come under any of these sections then the party must apply to the Government. *In the matter of the petition of Moulvie Syud Zoynoodeen Hossein Khan*, 11 B L R A C 370

"Section 15 authorizes a successful applicant for review of judgment, save when he succeeds wholly or in part on the ground of fresh evidence, which he could not produce at the original hearing to receive back nearly the whole of his fee he had to pay on his application for review," *In the matter of Maqbul Ahmad*, 31 All 294 (299): 6 All L J. 215: 1 Ind Cas 209

See also *Labhu Ram* v *Amir Chand*, 73 P.L.R 1916: 35 Ind Cas 663.105 P W R 1916, where it was held that an application made to a Court can be treated as an application for review and the Court upon granting the application would remit the court-fees under section 15 of the Court Fees Act even if already paid

Section 15 provides for re-payment in certain cases of so much of the fee paid on an application for review as exceeds the fee payable on any other application to the Court under the second Schedule, Art 1 cl. (b) or (d) where the Court modifies or reverses on review its former decision, *Krishna Mohan Sinha* v *Raghunandan Pandey*, F.B 1925 Pat. C.W.N 65: 1925 A.I R 392 (Patna): I L R 4 Pat 336: 6 Pat L.T. 262: 87 I C 137.

Section 151, C P. C—Where an application was under section 151, C P C. and Order 47, Rule 1, C. P. C. and the Court modified its former decision, *held* that refund should be ordered, *Probhas* v *Nithar*, 28 C.W.N. 928: 1924 A.I.R. 1054 (Cal.): 84 Ind Cas 278. See other cases under section 13, *supra*

An application for review was admitted in order to correct an error in the decree of the Court and not on the ground of any substantial error of fact or law and the Court corrected the error under ss 151 and 152 of the Code of Civil Procedure, held that a refund of court-fees paid on the application could be

made apart from s. 15 of the Court Fees Act, *C. T. A. M Chettyar Firm* v. *Ko Yin Gyi,* 7 Ran 88: 117 I.C. 585: 1929 A I R 158 (Ran.).

Review of consent decree obtained by fraud.—Where the appellant suppressed all processes to the respondent and obtained a decree on compromise by filing a false vakalatnama and the respondent on coming to know of the compromise filed an application to set aside the order on compromise, it was *held,* that as the Court has inherent power to correct its own proceedings when it has been misled and as the order could be summarily set aside by the Court, no court-fee as on an application for review need have been paid on the application, *Peary Chowdhury* v *Sonoo Das,* 19 C W.N 419: 27 Ind. Cas. 628

Sub-section II.—Sub-section II refers to cases when the reversal or modification is due to evidence which could have been produced at the original hearing In such cases no certificate for refund can be granted See *In the matter of Maqbul Ahmad,* 31 All 294: 6 A.L J. 215 · 1 Ind Cas. 209 and *Probash* v *Nithar,* 28 C.W N 928. 1924 A I.R. 1054 (Cal.) : 84 I.C 278

16. *Repealed by Schedule V of the Code of Civil Procedure (Act V of 1908).* It was as follows:—

"When any appeal is presented to a Civil Court, not against the whole of a decision, but only against so much thereof as relates to a portion of the subject-matter of the suit, and, on the hearing of such appeal, the respondent takes, under section 561 of the Code of Civil Procedure, an objection to any part of the said decision other than the part appealed against, the Court shall not hear such objection until the respondent shall have paid the additional fee which would have been payable had the appeal comprised the part of the decision so objected to"

NOTE.—Schedule V of Act V of 1908 was again repealed by the second Repealing and Amending Act XVII of 1914, section 3. This last repeal does not restore the original provision See s. 7 of the General Clauses Act (Act X of 1897).

Multifarious suits

17. Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal [*or of cross objection—in Bihar and Orissa*] shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure; Section 9. (Sch I, Order II, R. 6 of Act V of 1908).

[For **Bengal** only—Bengal Amendment Act VII of 1935.

Substitution of new section 17

For section 17 of the said Act, the following section shall be substituted, namely:—

Multifarious suits

"**17.** *(1). In any suit in which two or more separate and distinct causes of action are joined and separate and distinct reliefs are sought in respect of each, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees with which the plaints or memoranda of appeal would be chargeable under this Act in separate suits instituted in respect of each such cause of action.*

Provided that nothing in this sub-section shall be deemed to affect any power conferred by or under the Code of Civil Procedure, 1908, to order separate trials.

(2) Where more reliefs than one based on the same cause of action are sought either jointly or in the alternative, the fee shall be paid according to the value of the relief in respect of which the largest fee is payable."]

NOTES

Local Amendment.—This section has been amended in Bihar and Orissa whereby the words 'or of cross-objection' have been inserted after the words 'of appeal'. It has been replaced by a new section in Bengal

Application.—This section applies only to plaints and memoranda of appeal in suits and to applications or appeals arising out of those suits, *Upadhya Thakur* v. *Persidh Singh*, F.B 23 Cal. 723 (734).

Section 17 of the Court Fees Act applies where the relief claimed is one and the same [illegible]
but does not apply where t[illegible]
native, *Ananda* v. *Laxman*, 1[illegible]
1930 I.R. 43 (Nag.).

Section 17 of the Court Fees Act applies to suits and appeals

transfer of the decree and another for handing over the decree papers to the petitioner need not bear double court-fee specially as the second prayer is ancillary and incidental to the main prayer, *viz*, the transfer of the decree, *Dhanpatmal Dewanchand* v *F O Labhchand Sardarilal*, 1933 A.I.R. 343 (Sind): 27 S L.R 312: 148 I.C. 150

Alternative relief.—This section does not apply where the plaintiff sues in the alternative for one of two reliefs, but only applies to a case where cumulative relief is sought by the plaintiff, *Kashinath Narayan* v *Govinda Bin Piraji*, 15 Bom 82 See also *Motigavri* v *Pranjivandas*, 6 Bom 302; *Monohar Ganesh* v *Bawa Ram Charan*, 2 Bom 219; *Girdhari Lal* v *Ram Lal*, 21 All 200

Section 17 also applies to cases where alternative reliefs are asked for in respect of different causes of action, *Jawahir Singh* v. *Baldeo Prosad*, 11 O.C 173; *Hashmatunnissa Begam* v *Muhammad Abdul Karim*, 29 All 155. 4 All. L J. 127: (1907) 27 All W N 4, *Neelakandhan* v *Anantanarayan*, 30 Mad. 61.

The section, therefore, refers to "multifarious suits" in which two or more distinct causes of action have been joined under section 45, (Order 2 Rule 3) of the Code of Civil Procedure *Reference under the Court Fees Act*, 16 All. 401: (1894) 14 All W N 124

Where a suit was brought to recover lands from defendant No. 2, on the plea that the said lands were surrendered by defendant No 1, and it was claimed in the alternative that in case of failure of the 1st prayer the defendant No 1 may be ordered to refund the amount paid to him to induce him to surrender the land, *held*, that the suit embraced two distinct causes of action and separate court-fees must be paid on each relief, *Hirderam* v. *Ram Charan*, 78 I.C. 703: 1924 A.I.R 169 (Nag.).

Court-fees to be paid on the higher relief—Where the plaintiff claimed in the alternative but paid court-fees on the lesser of the two alternative reliefs, that relief alone should be tried The court-fees, in such cases, are to be paid on the larger of the two reliefs, *Kundun Lal* v. *Anund Sarup*, 1923 A.I.R 456 (Lahore): 73 Ind. Cas. 709.

Where a plaint prays for one of two reliefs in the alternative, based on one cause of action, the larger of the two reliefs determines the value of the claim and section 17 of the Court Fees Act does not apply, *Raja and others* v. *Muttalli and*

others, 1926 A.I.R 467 (Lahore): 96 I C. 826: 8 L L.J. 449: 27 P.L R. 626.

The plaintiff in a suit for declaration of his right to a half share in certain properties after setting aside the sale or in the alternative for recovery of the whole property with an account of the income of those properties, is to pay *ad valorem* court-fees on the 2nd relief which carries the higher court-fee *In re Venugopalayya*, (1931) 55 Mad 336: 62 M L.J 150: 1932 M W.N. 14. 32 L W 837: 1934 A I R. 158 (Mad.) 136 I.C. 747.

Section 17 of the Court Fees Act applies to alternative reliefs claimed with reference to more causes of action than one The operation of the section is not necessarily confined to cases where cumulative reliefs are sought, *Dharamchand* v. *Gorelall*, 47 Ind Cas 886, and also to separate reliefs claimed in the alternative, *Nur Nabi* v. *Umar Baksh and Pata Mal*, 41 P R. 1910 6 Ind Cas 715 65 P.W R 1910, *Mukhlal Gir* v. [illegible] Cas 143 (Patna); *Dhanukdhari* [illegible] Pat 17. 100 I C 913. 8 Pat L T.

Where two reliefs are identical in actual money value, but different in respect of court-fees leviable on each, then the amount of court-fees payable is to be determined on the relief carrying the higher fee, *Dasarate Meshy* v *Joy Chand*, 78 I.C 530. 1925 A I R 193 (Patna)

A suit on a pronote claiming money from the representative of the executant or in the alternative from the agent of the executant need not be stamped separately, *Anand* v *Laxman*, 120 I C 411 1930 A I R 55 (Nag). 1930 I.R. 43 (N.).

Distinct subjects.—The words "distinct subjects" in section 17 of the Court Fees Act mean distinct causes of action or distinct kinds of relief, *Chamaili Ram* v. *Ram Dei*, 1 All 552; see also *Mulchand* v *Shib Charan Lal*, 2 All 676 F B; *Chedilal* v. *Kirath Chand*, 2 All 682 F.B; *Kissori Lal Ray* v. *Sharut Chandra Mozumdar*, 8 Cal. 593: 10 C.L R. 359 F.B.: *In re P R M N Perchiappa Chetty* v *Po Kin*, 5 L B R. 94: 4 Ind Cas. 289, *Mothia Meera Muhaideen* v. *P K. Muhammad Ismail Rowther*, 1930 M.W.N. 758.

The words mean also distinct matters which may form the subject of separate suits though contained in the same instrument, and the word "*subject*" is not capable of precise definition, *Neelakhandhan Nambudripad* v. *Anantanarayana Pattar*, 30 Mad 61: 16 M L J. 462· 1 M L.T 426; *Kelu Achan and others* v *Cheriya Parvathi Nethiar*, (1924) A.I.R. 6 (Madras); 72 Ind. Cas 87.

The word "subject" in section 17 of the Court Fees Act means "cause of action," *Nauratan Lal* v. *Stephenson*, 4 Pat.L J.

195: 1922 (Pat.) C.W.N. 79: 50 I.C. 470. See also *Wazir Begum* v *Shashi Bhusan Roy*, I.L.R. 2 Pat. 874: 4 P.L.T. 546: 74 Ind Cas 820. (1924). All L.R. 77 (Patna); *East Indian Railway Co* v *Ahmadi Khan*, 1924 Pat. C.W.N. 175: 78 Ind Cas 415: 1924 A.I.R. 596 (Pat.); *Hirderam* v. *Ram Charan*, 78 Ind Cas 703. 1934 A.I.R. 169 (Nag.); *Mahantha Ram Narain Gir* v. *Gouri Shanker Lal and others*, 9 P.L.T. 199: 7 Pat. 402: 110 I.C. 191: 1928 A.I.R. 274 (Pat.).

But simply because one suit is brought or is required to be brought on several causes of action (for example on mortgage, etc.) would not mean one subject for the purpose of this section. See *Pollachi Town Bank*, [illegible] 68 M L J 316; 41 L.W. 327: 1935 [illegible] *In re Maharajah Venk*[illegible] 31 L.W. 282: 123 I.C. [illegible] *Soleman Saleji* v. *The Secretary of State*, [illegible] A.I.R. 135 (Cal.)

Suit for several declarations.—The plaint in a suit by reversioner for declaration regarding separate alienations by the widow, should be stamped with a court-fee of Rs. 10 for each declaration, *Daivachilaya Pillai* v *Pannathal*, 18 Mad 459. See also *Shambhu Dayal Singh* v. *Iswar Saran*, (1923) A.I.R. 306 (Allahabad): 75 I.C. 567; *Balkaran Rai* v. *Gobind Nath Tewari*, 12 All 129 (160).

Where a claimant, filing a claim under section 278 (Order 21, Rule 58), C. P. C. and whose claim has been disallowed, filed a suit against judgment-creditor and judgment-debtor and prayed 1st for a declaration of his right to the property; 2nd for a declaration that judgment-creditor has no right to sell the property in execution of the decree, held that in the plaint two substantial declarations have been prayed for, *Moti Singh* v. *Kaunsilla*, 16 All. 308.

Damages and injunction.—Where the plaintiff sued the defendants for wrongful cutting and removing certain trees and in the meantime during the pendency of suit obtained injunction against the defendants restraining them from removing certain trees cut down, the trial Court dismissed the suit and ordered the plaintiff to pay damages to the defendants under section 497, C. P. C. (XIV of 1882). The plaintiff appealed against the whole of the decree, and the damages awarded. *Held*, the court-fees on each head should have been given and the lower appellate Court should have allowed the plaintiff to amend his memorandum of appeal, *Misr Behari Lal* v. *Bhagwan Das*, 13 (1893) All. W.N. 220.

Deposits.—The plaint in a suit to recover three deposits made on different dates with the defendants should be stamped

with court-fees on each deposit separately as each deposit is a distinct subject. *Ramaswami Chettiar* v *Ramaswami Chettiar*, 61 M L J 680· 34 L.W. 378: 134 I C 988: 1931 A I R. 712 (Mad): 1931 I R 876 (Mad)

Ejectment.—In an action for ejectment, all the parties in possession are to be joined, and this includes the lessee as well as the tenants, if the lessee happens to be in possession of part of the land in suit, *Nundo Kumar* v *Banomali Gayan*, 29 Cal. 871

Ejectment, damages and rent—Claims for ejectment and damages are not distinct subjects but if a claim for rent is added, that claim is a distinct subject as it arose out of the contract of tenancy and can be enforced by a separate suit, *A W Zamal* v *Cyril Brown*, 36 Ind Cas 883: 10 Bur L T. 60: 8 L B R 529

Hundis.—In a suit upon three *Hundis* executed on the same day in favour of the same person and executed by the same person, the plaint ought to bear the aggregate amount of fees payable on 3 plaints in a suit on each of them as each of them constitutes a separate cause of action, *Pursottum Lal* v. *Lachman Das*, 9 All 252: 7 (1887) All W.N 42.

Inheritance—The plaintiff sued his brothers and a nephew for his share, inherited by him under the Hindu Law and under a will, of the moveable and immoveable properties by cancelling a deed of gift in favour of the nephew *Held*, that the plaint and memorandum of appeal are chargeable with the aggregate amount of the fees to which the plaints and the memoranda of appeal in separate suits for the moveable and immoveable property would have been liable under the Act, *Mulchand* v. *Shibcharan Lal*, 2 All 676 F B

Khatas—Where the plaintiff sought to recover a sum as the balance due to him on seven separate transactions which took place on different dates, *held*, that the several items in the *khata* constituted distinct subjects within the meaning of section 17 of the Court Fees Act, *Ramchandra* v. *Appaji*, 1887, P.J. 271, but a suit for balance due on a *khata* does not come under section 17 as the balance due is the subject matter, *Hiralal Motichand* v. *Ganpat Lahanu*, 46 Bom 142: 64 Ind. Cas. 486: (1922) A I R. (Bom) 376

Landlord and tenant.—In a suit by the landlord against 25 sets of tenants that the entries in the Record of rights as to the nature of the holdings are incorrect and were of a different kind, are 25 distinct subjects under section 17 of the Court Fees Act Court-fee payable for each is Rs 10, *Lachman Sahu* v. *Sheikh Abdul Karim*, 4 Pat.L J 299: 51 Ind. Cas. 7 —
a suit by tenant against landlord with regard to 78 d

holdings a similar decision was given, *Chethru Mahato* v. *Khaja Muhammad Karim Nawab*, 4 Pat.L.J. 297: 50 Ind. Cas. 328.

Where the rates of rent payable by tenants varied according to occupation and caste to which they belonged, one suit under section 106 of the Bengal Tenancy Act against all the tenants of a village in a body upon one plaint, with a court-fee *of Rs. 10 only for a declaration that the entry in* the Record of Rights and *Furd Rewaz Bhowli* as regards the proprietor's share, is wrong. One suit is to be instituted against such of the tenants as belonged to the same caste or followed the same occupation and each such suit should be stamped with a court-fee of Rs 10, *Dhakeswar Prosad* v *Iswardhari*, 22 C.L.J. 57: 30 I C 862.

Where the landlord sued several persons who hold different plots of land but alleged in the plaint that as all the defendants have, in league and collusion with one another, caused wrong entries to be made in the survey records and have dispossessed the plaintiff, they are all made parties to the suit, held on reference to the taxing judge, that there is only one cause of action against all the tenant defendants and the fact that the several defendants may be separately liable for *mesne* profits does not alter the nature of the case and one set of court-fees is payable, *Mahanth Ram Narain Gir* v. *Gauri Shankar Lal and others*, 9 P L T 199: 7 Patna 402. 110 I C 191: 1928 A.I.R 274 (Pat)

Enhancement of rent.—One suit by the landlord against a number of ryots in a village under s 193 of the Madras Estates Act, does not comprise distinct subjects The court-fee is payable on the total of the rents claimed as the suit was one for enhancement of rent on a common ground and also as the conditions mentioned in that section must all exist before a suit under the section can be instituted, *The Raja of Vizianagram* v. *The Government*, 63 M L J. 73: 1932 M W.N 777: 36 L.W. 141: 139 I C. 102: 1932 A.I.R 667 (Mad.)

Mortgages.—A mortgagee holding more than one mortgage against the same person and on the same property must sue on all of them, see *Ghose on Mortgage*, 4th Ed., pages 593 to 595 Where a mortgagee having several mortgages on the same property brought a suit on the prior mortgages and applied for sale of the property but not subject to the last mortgage which he held and had not sued upon, *Held*, that the suit is maintainable, *Govind Prosad* v *Teknarain Mahto*, 38 Cal 60: 14 C.W N 1033: 13 C.L J. 21. But in *Nilu Ray* v. *Asirbad* 25 C.W.N. 129: 33 C L J 232: 60 Ind. Cas. 809, it has been held that such a mortgagee can sue on each of such independent mortgages on the same property although he cannot sell it twice over. Where a mortgagee holds two mortgages on the same

property the decree obtained by him in the first suit precludes any further lien upon the property brought to sale, *Atab Pramaniq* v. *Arif Tarafdar*, 19 C.L.J. 590: 23 I.C. 426

Where a mortgagee holds two mortgages on the same property executed by the same person, he cannot maintain a suit to recover the sum due on the later mortgage, by sale of the property subject to prior mortgage as it would be a "splitting of claims" within the meaning of Sir Lawrence Jenkins' judgment in *Govind* v *Pareshram*, (25 Bom 161: 2 Bom L R 864), which section 43 (now Or 2, R 2), C P C was intended to prevent, *Keshavram* v. *Ranchhod*, 30 Bom 156: 7 BomL R 811: *Dhonda* v *Bhigaji*, 39 Bom 138 See also *Dorasami* v *Venkataseshayer*, 25 Mad 108 (for a converse case to the above) modified in *Subramania* v *Balasubramania*, 38 Mad 927 F B; *Matabin Kasodem* v *Kasim Husain*, 13 All 432

One suit on more mortgages than one against the same mortgagor by the same mortgagee does not come under section 17 of the Court Fees Act See *Thakur Jawahir Singh* v *Balwant Singh*, 7 O C 152, *Thakur Jawahir Singh* v *Baldeo Prosad*, 11 O C. 173 But the Patna High Court holds a different view. A suit upon two separate mortgage bonds embraces two distinct causes of action within the meaning of section 17 of the Act, therefore, the amount of court-fees payable on the plaint or memorandum of appeal in such suit is the aggregate of *ad valorem* fees on each of the bonds, *Nawab Waziri Begum* v *Sashi Bhusan Ray*, 1 P L T 414, 57 Ind Cas 685, *Jogendra Nath* v *Mohra*, 2 P L J 118

A person holding two mortgages from the same mortgagor hypothecating the same properties and even when the due dates in both are the same, can bring suits separately on both bonds, hence the mortgages are separate and distinct and not one under section 17 of the Court Fees Act (In this case an observation was made by the Hon'ble Judges that if the mortgagee is required to sue on all the mortgages either according to contract or by law then separate court-fees are not payable), *Nawaba Waziri Begum* v *Shashi Bhusan Ray*, 74 Ind Cas 820 (1924) A I R 77 (P.) · 1923 Pat C W N 293 · 4 Pat L T 546 · I L R 2 Pat. 874

The Madras High Court in *Pollachi Town Bank, Ltd* v. *A S Krishna Ayyar and others*, 68 M L J 316 41 L W 327: 1935 M W N 198 1935 A I R 262 (1) (Mad), held that one suit on two mortgages executed in lieu of five promissory notes embraces two distinct subjects and court-fees on that footing are to be computed on the plaint The principle of consolidation applied by sec 67-A, T P Act has no bearing upon the interpretation of s 17 of the Court Fees Act

N.B.—The cause of action on each contract is the bre·· of the covenant, hence compulsion to bring one suit on · . mortgages does not constitute one cause of action. It has i enacted by s 67A of the Transfer of Property Act that the mortgagee must bring one suit on several mortgages but that section does not apply to mortgages executed before 1st April 1930 (*vide* s 63 of the Amending Act).

But if several mortgagees decide to take one mortgage bond in the place of several mortgage bonds executed in their favour severally, then one suit on the *one* bond so executed does not include distinct subjects and court-fees on the entire claim are to be paid as on one subject, *Muthuram Chetty* v. *Sivasubramania Chetty*, 63 M.L.J 316: 1932 M.W N. 986: 36 L.W 424: 139 I C 431: 1932 A.I.R 737 (Mad.): 1932 I.R. 702 (Mad)

Partition and accounts.—In a suit for partition and accounts, the plaint is to be stamped with court-fees for partition plus *ad valorem* court-fees on the approximate valuation for accounts, *Beni Madhab Sarkar* v. *Gobind Chandra Sarkar*, 22 C W N 669 See also *Satis Chandra Ghosh* v *Kalidasi Dasi*, 26 C.W.N 177: 34 C L J 529, *Manikkam Pillai* v. *Murugesam Pillai*, 143 I C. 755: 1933 A.I R. 431 (Mad.): 37 L.W. 748 64 M L J. 576· 1933 M W N 531

Partition and debts.—If in a suit for partition creditors are made parties and it is prayed that respective shares be delivered free from those debts, then separate court-fees in respect of each of those debts are payable, *Perraju* v. *Subba Rao*, 68 M L J. 376: 41 L W 405· 1935 M W.N. 346: 1935 A I R 419 (Mad.).

Partition and possession.—Where a decree-holder-auction-purchaser obtained merely symbolical possession through the Court and then sued for partition and possession, held that the suit embraced two distinct causes of action and required to be stamped as a suit for partition and as a suit for possession. *Sitaram Jha* v. *Lokenath Missir*, 3 Pat. 618: 81 I.C 1052· 5 Pat L T. 618: 1924 A I.R. 558 (Patna).

Possession and compensation.—Suit for possession of a house, and compensation in the nature of rent and like compensation from the date of the foreclosure to the date of delivery of possession, is a suit with distinct subjects and court-fees are payable on the aggregate amount of fees payable for the different claims, *Chedilal* v. *Kirathchand*, 2 All 682 F.B.

Suits for possession with claims for mesne profits—Such suits are suits based on the same cause of action and therefore section 17 of the Court Fees Act does not apply, *Kissory Lal Roy* v. *Sharut Chandra Majoomdar*, 8 Cal 593: 10 C.L.R.

359; *Venkoba* v. *Subbanna*, 11 Mad 151; *Reference under the Court Fees Act*, 16 All. 401: 14 All. W.N. 124.

The court-fees in a suit for possession with *mesne* profits are to be paid *ad valorem* on the aggregate value of both the reliefs claimed and are not to be assessed separately *In re Pameswara Pottar*, 54 Mad 1: 59 M L J 469: 1930 M.W.N 880: 32 L W. 433: 1930 A.I.R. 833 (Mad): 130 I C. 742: 1931 I R. 438 (Mad.), F B.

Suit for possession, malikana and mesne profits.—In a suit for possession with a claim for malikana as well as a claim for *mesne* profits, the plaintiff is entitled to add together the valuation of the three items of his claim for the purpose of assessing the court-fees payable and need not assess it separately on each of the three items separately on the value of the land, separately on the malikana and separately on the amount of the *mesne* profits, *Nawratan Lal* v *Stephenson*, 4 Pat.L J 195: 50 Ind. Cas 470 1922 Pat C W N 79.

But if the suit for possession with a claim for *mesne* profits is coupled with a claim for rent, the claim for rent is a distinct cause of action, but not in cases where the suit is against a tenant holding over after the tenancy has terminated, *In the matter of A W Zamal* v *Cyril Brown*, 36 Ind Cas 883: 10 Bur L.T 60: 8 L B R 529.

Pre-emption.—The right to pre-empt the sale in respect of more villages than one is one cause of action and consequently court-fees are not leviable in respect of different villages, *Durga Prosad* v *Purandar Singh*, 27 All 186· 24 (1904) All W N 210

But if the plaintiff sues on an agreement to sell with an alternative claim for pre-emption of a mortgage of the same property the suit is within section 17 and therefore chargeable with court-fees assessed on each alternative relief, *Hashmat-unnissa Begum* v *Muhammad Abdulkarim*, 29 All 155 4 All L J 127: (1907) 27 All W N 4 Where the plaintiff alleges a definite contract with him to sell a house and a right to pre-empt a subsequent sale of the same house, if such sale is not rendered nugatory by the previous agreement, *held*, that these are distinct causes of action and the court-fees payable should be the same as if separate suits had been filed, *Musst Fatima Begum* v *Mahomed Zakaria*, 96 P.R 1895

Where the vendee in an appeal by him against a decree in favour of the pre-emptor on payment of Rs 6,800 asks for a decree restoring that to him or else requiring the successful pre-emptor to pay him an additional sum of Rs 3,200, these are two alternative reliefs based on exactly the same cause of action and only one of them can be granted They are not distinct

subjects within the meaning of s 17 of the Court Fees Act and the correct fee is one calculated not on the aggregate of two values but the higher of the two, *Tek Chand* v. *Tara Chand*, 5 Lah 114: 1924 A.I.R. 494 (Lah.): 85 Ind Cas. 556.

Suits against principal debtor and his guarantor.—Where the plaintiff sues the principal debtor on a cash credit account and also in the same suit seeks decrees against persons who guaranteed the promissory notes and one equitable mortgage, *held* that the plaint should be stamped with a court-fee calculated on the various amounts claimed from each and all the guarantors separately as each note is a separate cause of action and each mortgage affords an entirely distinct cause of action, *In re Bank of Bengal* v *R M L. Muthia Chetty*, F.B. 8 L.B R. 219. 8 Bur L T. 217: 30 Ind Cas 705

Promissory Notes.—Where the suit is upon several promissory notes in favour of the same payee, the plaint is to be stamped with a fee amounting to the aggregate amount of court-fees payable on a plaint for each of the sums as failure to satisfy each promissory note is a distinct cause of action, *In re P L R M N Perchiappa Chetty* v *Po Kin*, 5 L B.R. 94: 4 Ind Cas 289

A suit on a pro-note claiming money from the representative of the executant or in the alternative from the agent of the executant, need not be stamped separately as the relief claimed is one and the same though the claim is sought to be made out on distinct grounds, *Ananda* v *Laxman*, 120 I.C 411: 1930 A.I.R 55 (Nag) 1930 I R. 43 (Nag).

The plaintiff suing as an endorsee of the pro-note and failing in his suit, cannot by obtaining an assignment of the original obligation succeed without paying fresh court-fees as the plaintiff cannot tack on to a suit a cause of action which is foreign to the cause of action on which the suit was brought, *Pethee Reddiar* v. *Chidambara Reddiar*, 1931 M.W.N 390: 131 I.C 1: 1931 A I R 533 (Mad.): 1931 I.R 465 (Mad.).

A plaintiff suing on two promissory notes is to pay court-fees not on the aggregate sum but on the two sums which go to make up the aggregate, as if separate plaints have been filed, *The Secretary of State for India in Council* v *A M. R. Ayyasami Chettiar*, 141 I.C 533: 1933 A.I R. 178 (Mad.): 65 M L J. 252: 1933 M.W N. 215: 37 L W. 74.

Suit against Railway Company—A plaintiff who has sustained losses in respect of different consignments of different dates by reason of the negligence of a Railway Administration, can consolidate his claim and serve the Railway Administration with one notice in respect of all losses. Where one notice is served there is only one cause of action and court-fee is charge-

able only on the consolidated amount of money claimed. The aggregate amount of court-fee calculated separately on each item, cannot be charged, *The East Indian Railway Co* v. *Ahmadi Khan*, 1924 Pat C W N. 175: 78 I.C. 415. (1924) A.I.R. 596 (P).

Redemption and arrears of rent.—If the suit be for redemption as well as for recovery of arrears of rent then there are really two distinct causes of action and the court-fee is to be computed on arrears of rent and the principal amount of debt, *Rama Varmah Raja* v. *Kadar*, 16 Mad 415 (418).

Suit for specific performance and for possession—Inasmuch as in a suit for specific performance of a contract of sale and for possession of the property agreed to be sold, the relief for specific performance is the main relief and is not ancillary to the claim for possession a separate court-fee is, under section 17 of the Court Fees Act, payable in such relief both in the original Court and the Court of appeal, *Ram Nidh* v *Balkaram Singh*, 60 Ind Cas 654 23 O C 388, but see *contra, Madan Singh* v *Gaja Prosad Singh*, 11 I C 228: 14 C L J 159, where the plaintiff asked for specific performance of a contract of sale and also asked that the defendant may be compelled to execute a conveyance and to deliver possession of the property to him, *held* that the suit was one for possession only and court-fees are to be assessed under s 7 (v) of the Court Fees Act

A suit for specific performance and possession does not comprise two distinct subjects, *Sundara Ramanujam Naidu* v *Sivalingam Pillai and others*, 45 M L J 431 1924 A I R 360 (M) 47 Mad 150 77 Ind Cas 542. 18 L W 333

Suit for specific moveable property and for compensation—The plaint in a suit by the present holder of a certificate of administration to the estate of a minor against another whose certificate of administration has been revoked and for delivery or specific moveable property or for compensation for non-delivery need not be charged with court-fees under section 17 of the Court Fees Act as the suit did not embrace "distinct subjects" within the meaning of that section of the Court Fees Act on the total value of the claim, *Amar Nath* v *Thakur Das*, 3 All 131.

Consolidation of suits or appeals.—The power of High Court to consolidate appeals is inherent in it *See Kashi Prasad Singh* v *The Secretary of State for India*, 29 Cal 140, *In the matter of the falls of Ettricate*, 22 Cal 511, *Peacock* v *Byjnath*, 10 Cal 58 (allowed), *Vengu Naidu* v *Dy Collector Madura*, 34 M L J. 279 45 I C 468: 30 Bom 601: 17 C W N 526: 40 I C 13.

In *Moosa Soleman Saleji* v. *The Secretary of State*, 32

C.W.N. 776: 1929 A I.R. 135 (Cal.): 117 I C. 692, the Calcutta High Court declined to consolidate 4 appeals as one appeal embracing two or more distinct objects. The High Court said "The appeals may be consolidated for the purpose of hearing them but court-fees must be paid separately for each according to the provisions of the Court Fees Act." See *also other cases under Sch II, Art. 10, infra*

Separate suits (118 in number) of rent against separate tenants having failed in both the Courts below, separate appeals were filed in the High Court. An application was filed in the High Court to consolidate the appeals so that one memorandum of appeal, one vakalatnama may be filed and one consolidated court-fee may be paid; the High Court held that such consolidation cannot be allowed under s 151, C. P. C. as it would contravene, s 4 and Art. 10, Sch. II of the Court Fees Act and also Rules 1 and 3 of Order 41 of the Code of Civil Procedure *In re Maharaja of Venkatagiri*, (1929) 53 Mad 248: 58 M L J. 510: 31 L W 282: 123 I C 203: 1930 A I R 376 (Mad.): 1930 I.R 475 (Mad) F B

Maximum limit.—The rule is that section 17 of the Court Fees Act is subject to the proviso at the end of Art 1 of the Court Fees Act and the maximum fee leviable is Rs 3,000 as indicated in the schedule,
of State for India, 29 Cal 1
3 All 108 F.B.

18. When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which police-officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the Code of Criminal Procedure, the complainant shall pay a fee of eight annas, [*one rupee—Bengal. Madras and the Punjab; twelve annas in B. & Orissa and U. P.*] unless the Court thinks fit to remit such payment.

Written examinations of complainants.

NOTES

Local Amendments.—Under the Court Fees Amendment Act of Bengal (B. C. Act IV of 1922), of Madras (Madras Act V of 1922), and the Punjab Act VII of 1922, a *fee of one*

rupee is substituted for a *fee of eight annas* for those provinces In Bihar and Orissa and U P. *a fee of twelve* annas has been substituted in place of *eight annas*. No stamp is necessary on petition of complaint made to Magistrates of cognisable offences. *Bom H C. Cr Ruling*, 4th April, 1873.

A petition of complaint requires a court-fee stamp under Sch. II, Art 1 (b) of this Act. This section requires a court-fee stamp on complaints which have been reduced to writing The Criminal Court is empowered to remit such levy of court-fee Compare s 33 of this Act where no such power to remit was prescribed, one fee is to be levied either on the pet'tion or on the written examination of the complainant and not two fees. The elements are · (1) no petition previoulsy filed and (2) offences not cognizable by police officers or of wrongful confinement or wrongful restraint

The Presidency Magistrates' Act 1877 (Act IV of 1877). Section 57 A fee of eight annas shall be paid for every summons issued by a Presidency Magistrate except in the case of a summons to attend and give evidence or to produce documents, in which case there shall be paid a fee of four annas.

Fees for summons and warrants

Provided that such Magistrate may in any case remit any such fees, if he is satisfied that the complainant is unable to pay the same, and shall remit it when the complaint is made by a public servant in the execution of his duty

Power to remit fees

19. Nothing contained in this Act shall render the following documents chargeable with any fee:—

Exemption of certain documents

i. Power-of-attorney [*or other written authority—added in Bengal*] to institute or defend a suit when executed by an officer, warrant-officer, non-commissioned officer, or private of Her Majesty's army not in civil employment.

ii. [*Repealed by the Repealing and Amending Act, 1891 (XII of 1891)*]

iii. Written statements called for by the Court after the first hearing of a suit.

iv. [*Repealed by the Cantonments Act, 1889 (XIII of 1889)*.]

v. Plaints in suits tried by Village Munsifs in the Presidency of Fort St. George.

vi. Plaints and processes in suits before District Panchayats in the same Presidency.

vii. Plaints in suits before Collectors under Madras Regulation XII of 1816.

viii. Probate of a will, letters of administration, [and, save as regards debts and securities, a certificate under Bombay Regulation VIII of 1827], where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed one thousand rupees.

ix. Application or petition to a Collector or other officer making a settlement of land revenue, or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.

x. Application relating to a supply for irrigation of water belonging to Government.

xi. Application for leave to extend cultivation or to relinquish land, when presented to an officer of land-revenue by a person holding under direct engagement with Government, land of which the revenue is settled, but not permanently.

xii. Application for service of notice of relinquishment of land or of enhancement of rent.

xiii. Written authority to an agent to distrain.

xiv. First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document, or in respect of

the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.

xv. Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise

xvi. Petition, application, charge or information respecting any offence when presented, made or laid to or before a Police-Officer, or to or before the Heads of Villages or the Village-Police in the territories respectively subject to the Governors in Council of Madras and Bombay

xvii. Petition by a prisoner, or other person in duress or under restraint of any Court or its officers.

xviii. Complaint of a public servant (as defined in the Indian Penal Code), a Municipal officer, or an officer or servant of a Railway Company

xix Application for permission to cut timber in Government forests, or otherwise relating to such forests

xx. Application for the payment of money due by Government to the applicant

xxi. Petition of appeal against the chaukidari assessment under Act No. XX of 1856, or against any Municipal tax.

xxii Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes.

xxiii Petitions presented to the Special Commissioner appointed under Bengal Act No. II of 1869 (*to ascertain, regulate and record certain tenures in Chota Nagpur*).

xxiv. Petitions under the Indian Christian Marriage Act, 1872, sections 45 and 48.

[Added in **Bengal**—B C. Act VII of 1935.

xxv. *Petitions of appeal by Government servants or servants of a Court of Wards against orders of dismissal, reduction or suspension; copies of such orders filed with such appeals, and applications for obtaining such copies.*]

NOTES.

Change in Law.—The words "and save as regards debts and securities, a certificate under Bombay Regulation VIII of 1827," in Clause VIII, have been substituted for the words "and certificates mentioned in the first schedule to this Act annexed, No 12" by Act VII of 1889, section 13 (2).

The Clause XXIV was substituted for the original by the Indian Christian Marriage Act, XV of 1852, section 2 The original ran as follows:—Petition under the fourteenth and fifteenth of Victoria, Chapter forty (an Act for the Marriages in India), section 5 or under Act V of 1852, section 9 The present Act is Act XV of 1872. Clause XXV has been added by the Bengal Amendment Act of 1935 (VII of 1935).

Local Amendment.—The words "one thousand rupees" in clause (viii) have been changed to "two thousand rupees" in Bengal by Local Amendment Act of 1922. Clause 1 amended by B. C. Act VII of 1935.

Clause III. Written statement.—Written statement filed by party at the first hearing of suit does not require court-fees. *Cheerag Ali* v. *Kadir Mahomed*, 12 C L R. 367.

Written statement of his case, tendered by party to a suit at any time before or at the first hearing of the suit, is not liable to any court-fee, and may be written on a plain paper and a written statement called for by the Court after first hearing is also exempt from duty, *Nagu* v. *Yeknath*, 5 Bom 400. But a written statement containing a plea of set-off must be stamped *ad valorem*, *J. J. Guise* v. *Anantha Rama Rathi*, 10 C.W.N. 199. See the cases under Schedule I, Art. 1 of the Court Fees Act under "set-off".

There is nothing in the law which requires a defendant in a partition suit to pay court-fees in order to have his share separately allotted to him; he has merely to ask for it in his written statement, and it is open to the Court to order the shares of the defendants in a partition suit to be separated as among themselves, *Hem Chandra Mahto* v. *Prem Mahto*, 7 P.L.T. 295 (299): 1925 Pat. C W.N. 330: 90 Ind. Cas 789: 1926 A.I R. 154 (Patna).

A written objection to an award filed in Court must be stamped. It clearly does not fall within the exception provided by s 19 of the Court Fees Act which *inter alia* exempts a written statement in a pending suit but makes no mention whatsoever of written objections to an award, *Adamali* v. *Abdul Ali*, 107 I.C. 223: 1928 A I R 87 (Sind).

Note:—Under Schedule I, Art 1 of the Court Fees Act only "a written statement claiming a set-off, or counterclaim" is chargeable with court-fee stamps, therefore other written statements are not chargeable with duty

Section 19 (iii) of the Court Fees Act includes not only suits but also miscellaneous cases Therefore, written statements which are filed opposing an application by the Official Liquidator under the Companies Act do not require court-fees, *The Indian States Bank Ltd (in liquidation)* v *Musst. Rukmini Rani and others*, 56 All 747 1934 A L J 881. 148 I C 642 1934 A I R 332 (All)

Clause VIII.—No duty is payable in respect of a grant of probate or Letters of Administration where the value of the estate, after making the deductions specified in Annexure B of the 3rd schedule, is less than Rs 1,000 *In the goods of Mrs E. E. W Meik*, 40 All 279 46 Ind Cas 865

Clause XVII.—Petition of appeal presented by pleader on behalf of a prisoner need not be stamped with court-fees, *Emperor* v *Maruti Teli*, 14 N L R 77· 45 Ind Cas 158 19 Cr L J 494 See *In re Court Fees Act*, 1924 A I R 160 (R) See *Kali Prosad Banerjee* v *Gisborne and Co.*, 10 Cal 61. 13 C L R 156, where it was held that a memorandum of appeal by a judgment-debtor in custody under Ch XX, C P C (Act XIV of 1882) need not bear stamp

Application for bail signed by the advocate is an application by the prisoner himself and comes under section 19, clause (xvii) and is not required to be stamped, *Jagannath Kahar* v. *Emperor*, 4 U.B R. 27: 65 Ind. Cas 553. (1922) A.I.R. 14 (Upper Burma).

An application by an advocate on behalf of a prisoner in jail should be held to be made by the prisoner and therefore exempt *from court-fee duty under s 19 (17) of the Court Fees Act, Bhaya Lal* v. *Emperor*, 1930 A I R. 261 (Allahabad) · 52 All. 542: 1930 A L J 682: 31 Cr L J 1121: 126 I.C. 827: 1930 I R. 875 (All).

Clause XVIII.—No fee is leviable on complaints made by Municipal officers, *Queen Empress* v. *Khajabhoy*, 16 Mad. 423.

A complaint by a Munsiff, though it does not bear the seal

of the Munsiff's Court, need not be on stamped paper, *Reg* v *Sajjan Valad,* 5 Bom.H C (Cr. Ca.) 104.

A complaint by a Tahsildar to a Magistrate on the ground that the amin under him was assaulted in the discharge of his duty, does not require court-fees, *Emperor* v. *Sheo Pratap Singh,* (1930) 53 All 208 1930 A L J.1316: 129 I C. 436: 1930 A I R 820 (All.): 32 Cr L J 306: 1931 I R. 164 (All.).

Clause XX.—An application for refund of costs deposited in Privy Council appeal, is to be stamped with a court-fee of two rupees, *Haridas Debi* v *Gopeswar Pyne and others,* 27 C.W N. 646. (1923) A.I R 599 (Cal.): 23 I C. 469.

Section 19, cl 20 covers the case of an application for refund of court-fees and therefore no court-fee is chargeable on it, *Jog Narain Pandey* v *Mata Badal,* 54 All. 790: 1932 A L J. 601: 142 I.C. 16: 1932 A.I R. 590 (All): 1933 I.R. 100 (All)

Clause XXI.—Application for compensation under the Land Acquisition Act need not be stamped *India Gazette, dated the 26th February, 1870*

CHAPTER IIIA.

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION.

Relief where too high a court-fee has been paid

19A. Where any person on applying for the probate of a will or letters of administration has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a court-fee thereon, if, within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Chief Controlling Revenue Authority [for the local area] in which the probate or letters has or have been granted

and delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation,

and if such Authority is satisfied that a greater

fee was paid on the probate or letters than the law required,

the said Authority may—

(*a*) cancel the stamp on the probate or letters, if such stamp has not been already cancelled;

(*b*) substitute another stamp for denoting the court-fee which should have been paid thereon; and

(*c*) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

NOTES

Change in law.—Chapter IIIA was inserted by the Probate and Administration Act, 1875 (13 of 1875)

The words "for the local area" were substituted for the words "of the Province" by section 3 (1) of the Court Fees (Amendment) Act, 1901 (10 of 1901)

Application.—The provisions of Chapter III of the Court Fees Act, 1870, does not apply to Probate *In the matter of the Last Will and Testment of Ram Chandra Lakshmanji*, 1 Bom 118 (121)

Until the Court Fee is paid and grant is issued to the party there is no grant of Probate, *Alamelammall* v *P N K Surya Prokasoroya Mudaliar*, 38 Mad 988 29 M L J 680 31 I C 491

Nature of duty—"The sum charged upon a grant of Probate or of Letters of Administration, is not a tax or duty levied upon the property upon which the Probate or Administration operates, and it is not charged thereon as in Estate Duty in England, but it is merely a fee levied by the Court issuing the Probate or Letters of Administration for the work done in this connection And I do not think that this is any less the case because the fee is levied upon the value of the property" *In re the Goods of George Thomas Williams*, 27 CWN 812: (1924) A I R 115 (Cal) · 50 Cal 597 75 Ind Cas 466

Relief where debts due from a deceased person have been paid out of his estate.

19B. Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted

out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act,

such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances

NOTES

As for cases when the incumbrances are to be deducted, see *In Re Will of Ram Chandra Lakshmanji*, 1 Bom 118; *In the goods of Charles Edward Maclean*, 6 N W P. 214; *In re the goods of Peter Innes*, 8 B L R Ap 43: 16 W R. 253

Payment of debts—Debts due by the deceased are not to be deducted in the first instance, *In the goods of Ram Chandra Das*, 9 B.L.R O C. 30; 18 W.R 153.

19C. Whenever a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

Relief in case of several grants

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall

be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

NOTES

Change in law.—The word "such" following the word "whenever" in the first paragraph is omitted having been repealed by Act XII of 1891, Schedule I

As to the amount of duty payable, see also Schedule I, Art. 11 of the Court Fees Act

Application.—This section does not apply to the estate of a deceased person in respect of which no fees have yet been paid in India under the Succession Act, *In re Murch*, 4 Cal 725 (726); *In the goods of Gladstone*, 1 Cal 168

Applies only to properties situate in British India—"Where London is the locality in which the business which is the property of the firm is situate" no probate duty is payable on the death of the partner, on the assets of the firm in India as "there is no capital account in Bombay at all and that the Bombay business is not a distinct business from London business" *In the goods of Sir Albert A D. Sassoon*, 21 Bom 673 But where a part is situate in British India and part outside, court-fee is payable in respect of property within British India although some property may have been brought into British India after the death of the testator, the test of liability being the locality of assets *at the time of testator's death* *In re Ezekiel Joshua Abraham*, 21 Bom 139.

Probate duty is payable in respect of property within the jurisdiction of the Court at the time of the application for probate Therefore when the testator left properties which are not saleable or transferable unless they have been transferred to the executor or trustee in the Bank of England, *held*, that such securities are not assets in India and no duty is leviable thereon *In the goods of Major-General Millet*, 51 P.R. 1902

Valuation.—See also under Art. 11, Schedule I of the Court Fees Act The word "property" has been explained in *In the goods of T. H Maddock*, 15 W.R 456: 7 B.L.R. 57, to mean not only the property which the deceased was beneficially entitled in his life-time but also property standing in his name as trustee

When letters of administration are granted in respect of property which is subject to mortgage, the value of the property is the value of the property less the amount of encumbrance, *In the goods of Peter Innes*, 16 W.R. 253: 8 B.L.R. Ap. 43; *In the goods of Charles Edward Maclean*, (1874) 6 N.W.P.

out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act,

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But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances

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Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall

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214; but see *contra*, *In the goods of Ram Chandra Das*, 18 WR 153. 9 B L R 30.

An executor is bound to pay probate duty only on the amount of the right, title and interest of the testator in the property bequeathed, *Anna Purnamma* v. *Atchutaramayya*, 100 I C 111

Annuity—The valuation in the case of an annuity is its market value and not ten times the annual payment *In the matter of last Will and Testament of Ramachandra Lakshmanji*, 1 Bom. 118

Where the estate is subject to the payment of an annuity for life to a person who survived the testator, the fee payable is on the value of the property less the capitalized value of the annuity *In the goods of Rushton*, 3 Cal 737: 2 C.L R. 430, *In the goods of Peter Innes*, 8 B L R App. 43: 16 W.R 253

Mortgage—The word "value" means market value and the value of a mortgaged property is the equity of redemption. If after filing of accounts it is found that sufficient stamp duty has not been paid, payment of any deficiency may be enforced *In the goods of Charles Edward Malcean*, 6 N.W.P. 214

Partnership—"A deceased partner has (in the absence of special agreement) no share in the properties of the firm as such It is his interest in the firm which is the asset which is assessable to probate duty." *In the goods of A. D Sassoon*, 21 Bom 673 (678).

Properties subject to litigation—Properties which are subject-mater of litigation and which have not come into the possession of the deceased, were allowed to be valued at less than Rs 1,000, but the parties were ordered to file statements in Court showing the result of litigation, *Seldanha* v *The Secretary of State for India in Council*, 24 Mad. 241.

There is no provision in the Court Fees Act, 1870, authorizing exemption in respect of an entire claim or a portion of it supposed to be doubtful *Edward Lane Beake*, 21 W.R 297 13 B L R A C. 24; *In the Goods of Abdul Aziz*, 23 Cal 577; *In the goods of Ram Chandra Ghose*, 24 Cal. 567 (case of a judgment-debt).

But desperate and doubtful debts need not be included in the list in the first instance, but if they afterwards form part of the estate, court-fees on the same may be recovered, *Moses* v *Crofter*, 4 C. and P. 524 approved in *A. G.* v. *Brunning*, 8 H. L Case 243 (62).

See also Halsbury's Law of England, Vol. XIII, pages 312-314 as to the method of valuing the property and deductions that can be made from that valuation.

Shares—In case of shares the court-fees are chargeable on the value prevailing on the date of application for probate and subsequent changes do not alter the amount of cour-fees payable. *In the matter of A C Macmillan*, 5 Bur L T. 39. 14 Ind. Cas 804.

Proof of valuation—See Schedule III and annexures A. & B of the Court Fees Act

Proof of valuation is by affidavit but this valuation is inspected and enquired into by Revenue authorities under section 19H of the Court Fees Act. But the Administrator-General is exempted from verifying the affidavit *In the goods of McComiskey*, 20 Cal 879, *In the goods of P J Advall*, 26 Cal 404. 3 C W N 298

The valuation is now checked by the Collector under authority conferred by Resolution No 980 S R. dated the 10th February, 1902 (Calcutta).

No double duty payable.—No fresh court-fees are payable in the 2nd grant *In the goods of Lt.-General Peter Innes deceased*, 16 W R. 253: 8 B L R Ap. 43. *The Deputy Commissioner of Singhbhum* v. *Jagadish Chandra Dhobal Deo*, 6 Pat. L J 411: 62 Ind Cas. 513, *although the rate may have increased in the meantime.*

When an executor to whom probate has been granted dies, leaving a part of the testator's estate unadministered, and a new representative is appointed for the purpose of completing the administration, no new succession duty should be levied as there is no new succession and no devolution of the estate. Full fee is chargeable under the Court Fees Act on probate where it is first granted and no further fee shall be chargeable when no second grant is made in respect of the same property as comprised in the estate and the Court cannot ask the applicant in the second application even to pay the difference between the old rate of duty payable and the new rate having been increased in the interval An order calling upon the party to pay the difference amounts to a refusal to grant probate and an appeal lies under section 86 of the Probate and Administration Act, *Swarnamoyee Devi* v. *The Secretary of State for India in Council*, 43 Cal 625: 22 C L.J. 370: 20 C.W.N. 472: 30 Ind Cas. 394, see also *In the goods of Julia Oram*, 21 W.R. 245: 12 B.L R. Ap 21; *In the goods of Bibee Ameerun*, 15 W.R 496.

Although the value of the property must have increased in the meantime.—No fresh court-fees are payable, although the value of the property may have increased in the meantime See *Samuel Balthazer, Petitioner*, 4 L B R. App. 139 (copy of the exemption of probate of the will annexed and of the document produced in lieu of the former Letters of Administration).

Grant in favour of some executors—grant de bonis non—By section 19C, provided that the full fee chargeable under the Act has been paid, no further fee is to be chargeable when a like grant, *i e*, a grant of probate or letters of administration, is made in respect of the whole or any part of the same property belonging to the same estate. There is nothing in the wording of section 19C to confine its application to the case of some executors coming in to take out after one of their members has already taken out probate It will apply equally to a subsequent applicant for the administration of the whole estate and an application to administer that which has been unadministered so far When the appointment is made *de bonis non* there is no new succession, no new devolution of the estate, which would justify a finding that fresh court-fees must be paid. *In the matter of the estate and effects of Maung Win Pan deceased, and In the matter of the estate and effects of Haco Wah Kin deceased,* I L R 3 Rangoon 90 (92) · 1925 A I R 217 (Rangoon).

But fresh court-fees are payable for a fresh devolution—The estate mentioned in section 19C, means property of the deceased person Section 19C implies that, where court-fees have already been paid by some previous executor or administrator in respect of the whole or part of the property comprised in the estate of the deceased person and a fresh grant of probate or letters of administration is necessary, no fresh fees should be charged for such grant; but where a husband applies for probate of his wife's will, most of the property devised by which was included in her father's will, the husband must pay the full court-fee, even though full court-fees have already been paid for probate of the father's will, *Bhagawati Saran Singh* v. *The Secretary of State for India in Council,* 5 Pat L.J. 36: 54 Ind Cas. 703: 1920 (Pat.) C.W.N 81.

But second fees were payable, as at the time of the second grant the Court Fees Act, 1870, had come into force. *In the Goods of George,* 6 B L R App. 138; *In the goods of W. G Chalmers,* 6 B.L R. App. 137: 21 W.R. 246

Annulling grant.—The duty paid on former Letters of Administration which was afterwards cancelled, was allowed to be deducted from the amount payable for fresh Letters of Administration *In the goods of Peter Innes,* 16 W.R 253· 8 B.L R. App. 43.

Where an application is filed that the grant be annulled under section 234 explanation 4 of Act X of 1865 in order that a fresh grant might be applied for, the latter will be exempt from further court-fees under section 19 (C) of the Court Fees Act, 1870 *Application by Elizabeth A. Desouza for probate of will of Alfred Jones Desouza under Act X of 1865,* 1 S L.R. 177.

Power of appointment.—No fresh court-fees are payable in respect of any property where a person having a life interest in a fund with a general and absolute power of appointment thereover, exercises such power by will *In the goods of Julia Oram*, 21 W R 245; 12 B L R Ap 21, *In the goods of George*, 6 B L R Ap 138

But in the case of *In re Lakshminarayana*, 25 Mad 515, such power of appointment by wife was held to be property within the meaning of Art 11, Schedule I of the Court Fees Act and the property in respect of which such power of appointment was exercised was held to be liable to probate duty a second time.

Probates declared valid as to trust-property, though not covered by court-fee

19D. The probate of the will, or the letters of administration of the effects of any person deceased heretofore or hereafter granted, shall be deemed valid and available by his executors or administrators for recovering, transferring or assigning any moveable or immoveable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court-fee was paid on such probate or letters of administration.

NOTES.

See Notification No 4650, dated 10th September, 1889, in the Appendix.

Trust property descending on the death of the trustee is liable to *ad valorem* court-fee duty. *In the goods of Beresford*, 15 W R. 456: 7 B L R. 57.

The deceased, a German subject, married a lady in Rhenish Prussia where Code Napolean prevails, and under that law the husband and wife have equal interest in the properties and on the death of one of them, the one half goes to the heirs and the other half to the survivor. Hence on the death of the deceased only one half of the property was held liable to stamp duty. *In the goods of Foerschman*, 20 Cal 575

Property held in trust—means property of which the testator was a trustee, not that of which he has created a trust. *The Deputy Commissioner of Singbhum* v. *Jagadish Deo Dhabal* 6 Pat. L J. 411: 62 Ind. Cas 513

See *Mangaldas* v. *The Secretary of State for India*, 108 I C 709, 1928 A I R. 55 (Bom.) *infra*

Dayabhaga —Where one of two brothers governed by Dayabhaga law of inheritance died unmarried leaving the other brother as heir who applied for Letters of Administration of the property and credits of the deceased consisting of (1) moneys in Government Bank, (2) Government securities standing in the name of the deceased, (3) family dwelling house *Held*, that the court-fees are payable on the share of the deceased brother, but the surviving brother's share was to be treated as trust property in his hands and therefore exempt from duty. *In the goods of Brindaban Ghose*, 19 W.R 239: 11 B L.R. Ap. 39

Where a Hindu daughter died possessed of her father's property and also some Government Promissory Notes standing in his own name *Held*, that no duty is payable in respect of these properties *In the goods of Joymoney Dassi*, 14 B L R 184 But see *In the goods of Tarun Kumar Ghosh* deceased, 62 Cal 114, where the father of the deceased minor was made to pay although the money in the post office standing in the name of the deceased minor was his own money

Survivorship in Mitakshara —Where property was purchased by four brothers as members of joint Hindu family and with joint funds and one of them subsequently died leaving a will, and the surviving brothers applied for probate as executors and trustees under the will notwithstanding that it was bequeathed to them as tenants in common. *Held* that it was not liable to probate duty, *In the goods of Pokhurmull Agarwala*, 23 Cal. 890: 1 C W N 31.

The above case was followed in the case of *Collector of Khaira* v *Chuni Lall*, 29 Bom 161: 6 Bom L R. 652, where it was held that the grant of Letters of Administration is exempted from stamp duty and that exemption of trust estate does not depend upon the condition whether there had been a previous grant or not; the exemption has reference to the character of the property and not to the procedure adopted But a contrary rule was laid down in *In the matter of Dasu Manavale Chetty*, 33 Mad 93: 19 M.L J. 591: 6 M.L T. 286: 4 Ind Cas. 1064, where the decisions reported in 23 Cal 980, and 29 Bom. 161, were not followed on the ground that in these decisions the effect of the words "not beneficially or with general power to confer a beneficial interest," following the words "property held in trust" in Annexure B, was not considered See also *Mulukutta Annapurnamma* v. *Mulukutta Atchutarammayya*, 100 I.C 111: 38 M.L.T. 7 (H C.): 1927 A.I R 1101 (Mad) where it was held that the probate duty is to be paid only on the right, title and interest of the testator in the property bequeathed.

Also where one member of a joint Hindu family died leaving a will by which his share in the joint family property was disposed of, *held* that the whole property was liable to probate duty, inasmuch as the parties claiming under the will could not go behind its terms or claim any exemption whatever upon allegation inconsistent with the will or its provision, *Kashinath Parashram* v *Gourabai Mullappa Warad*, 17 Bom L R 169. 39 Bom 245: 28 Ind Cas 473; the case of *Kashinath* v. *Gourabai* was not followed in *Keshavlal* v *Collector of Ahmedabad*, 48 Bom 75· (1924) A I R 228 (Bom): 25 Bom. L R. 1240 77 Ind Cas 749, but was reaffirmed in *In the goods of Madho Prasad*, 1935 A L J 391 154 I C 722 1935 A I R. 449 (All) where it was held that the necessity for the issue of letters of administration is not a question to be determined when such letters have been ordered to be issued but such letters cannot issue without prepayment of court-fees If a person applies for it he has got to pay court-fees See also *Re Estate of Ram Kumar Prasad*, 5 Pat L J 510· 58 *Ind Cas 1007*: 1 Pat L T 710. See also *In re Bhubaneswar Trigunait*, (the case reported in 29 C.W N. 372 having been reversed by the appeal Court) in *52 Cal 871*: *29 C.W.N. 879*: *95 I.C. 529*: *1925 A.I.R.* 1201 (Cal.) where a Hindu father and his brother lived together in a joint Mitakshara family and on the death of the father intestate leaving certain money in a Bank, the Letter of Administration granted to the sons was exempted from court-fee duty.

A Hindu testator by his will made his wife and the minor sons of his nephew joint owners of the estate and appointed his wife executrix of his estate and further provided that after the death of his wife the sons of the nephew are to take possession of the estate, held that no joint tenancy was created by the will and that after the death of the wife the property was to vest absolutely in the sons of the nephew. There was no trust created by the will appointing the widow a trustee for the sons of the nephew, hence the sons of the nephew are not entitled to be exempted from duty under sec. 19D of the Court Fees Act, *Mangaldas Kilabai Patel* v. *The Secretary of State for India*, 1928 A I R 55 (Bom): 108 Ind. Cas. 709: 52 Bom. 188: 30 Bom.L R 54.

Shares—A share in the Bank, for the purpose of devolution or survivorship, must be deemed so far as the bank was concerned, the exclusive property of its registered holder. Therefore when that shareholder dies, a probate or letters of administration is necessary as a claim by survivorship cannot prevail, *Bank of Bombay* v. *Ambalal Sarabhai*, 24 Bom. 350: 2 Bom.L.R. 467. See *In the goods of Madho Prasad*, 1935 A.L.J. 391: 154 I C. 722: 1935 A I R 449 (All). But if the shares stand in the joint names of husband and wife then it is presumed that an

advancement to the survivor was intended and if the wife survives the husband, then the property is hers and not the property of the deceased husband, hence no court-fees are leviable, *Deputy Commissioner, Lucknow* v. *Mrs M. D. Aikman*, 9 Luck. 370 11 O W N 78. 1934 A I.R. 72 (Oudh): 148 I.C. 247.

Refund.—A Mitakshara father died leaving two sons who were joint with him and to whom the property passed by survivorship. The deceased had, before his death, deposited with two banks 2 sums of Rs 5,000 each (property of the joint estate), who refused to hand over the money to the sons unless they take out Letters of Administration with respect to the same; consequently Letters of Administration were obtained and the duty paid. Subsequently the sons filed an application for refund of the duty paid as the property in respect of which it was paid was joint family property, *held*, that no refund could be granted as no duty has been previously paid, *Collector of Ahmedabad* v. *Savchand Ladukchand*, 27 Bom 140: 4 Bom.L.R. 974.

Provision for case where too low a court-fee has been paid on probates, &c

19E. Where any person on applying for probate or letters of administration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a court-fee thereon, the Chief Controlling Revenue-authority [for the local area] in which the probate or letters has or have been granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of the grant, of five times, or, if it or they is or are produced after one year from such date, of twenty times, such proper court-fee, without any deduction of the court-fee originally paid on such probate or letters:

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in

consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon

NOTES

Change in law.—The words "for the local area" were substituted for the words "of the Province" by the Repealing and Amending Act (Act X of 1901), section 3 (1)

Power of Chief Controlling Revenue-Authority.—As to the powers of Chief Controlling Authority to remit the whole or part of any penalty or forfeiture imposed under this section, see section 20 of the Probate and Administration Act (Act VI of 1889) See also sec 19J, *infra*

Manner of collection.—See I. G Notification No 1522, dated the 10th March, 1885, as amended in the Appendix

Scope.—*Rights of Secretary of State*—The Secretary of State has the right to sue for recovery of penalty imposed by Revenue authority under statutory powers, but these powers must be exercised in conformity with the statute Section 19E of the Court Fees Act contemplates an application on the part of the person who has taken out probate and produces the same to be duly stamped It further contemplates that when the estimated value of the estate is less than what the value afterwards proved to be, a Civil Court cannot revise the valuation of a Revenue officer unless the same is *ultra vires* or not in accordance with law, *Nikunja Rani Chowdhurani* v *Secretary of State for India*, 43 Cal 230 · 20 C W N 504 22 C L J 875: 31 Ind Cas 460 Section 19E contemplates an application by a person who has taken out probate and produces the same to be duly stamped, *Manekji* v *Secretary of State for India in Council*, (1896) P J Bom 751

Mistake.—Section 19G, Court Fees Act, has to be read with sec 19E of that Act, the words used being identical and the sections providing the similar cases Sec 19E shows clearly that it refers to a wrong estimate of the property arising either from a mistake or from the fact that a certain property is not known to have belonged to the deceased The learned Counsel for the Crown contends that the words "not known at the time that some particular part of the estate belonged to the deceased"

include both a mistake of fact as well as a mistake of law. If the word 'estimate' does really cover both, then similarly the word 'estimate' in sec. 19H also covers similar mistake and, therefore, the procedure is as prescribed for the revenue authorities where there is contest as to whether there is or is not such a mistake, *Feroze A Cooper* v. *The Secretary of State for India*, 111 I C 692· 1928 A I.R. 947 (Lah.).

Administrator to give proper security before letter stamped under section 19E

19F. In case of letters of administration on which too low a court-fee has been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid until *the administrator has given such security to the* Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

Executors, &c, not paying full court-fee on probates, &c, within six months after discovery of under-payment

19G. Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not, within six months * * * after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, apply to the said Authority and pay what is wanting to make up the court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper court-fee.

NOTES.

Change in law.—The words and figures "after the 1st day of April, 1875, or" are repealed by the Repealing and Amending Act (Act X of 1901), Schedule I.

Frame of section —Section 19G is moulded on section 43 of 55 George III, c. 184 and section 122 of 56 George III, C. 56.

Nikunja Rani v. *Secretary of State for India in Council*, 43 Cal 230: 22 C L J 375: 20 C.W N. 504: 31 Ind Cas 460

For the protection of revenue, however, section 19G provides a penalty The duty of determining whether too low a court-fee is paid is imposed on Revenue authorities and the Civil Court has no power of reviewing his decision and ordering penalty to be repaid if such decision by Revenue authority happens to be wrong, *Manekji Edalji* v *Secretary of State for India in Council*, (1896) Bom P J. 751.

Notice of applications for probates or letter of administration to be given to Revenue authorities, and procedure thereon.

19H. (1) Where an application for probate or letters of administration is made to any Court other than a High Court, the Court shall cause notice of the application to be given to the Collector.

(2) Where such an application as aforesaid is made to a High Court, the High Court shall cause notice of the application to be given to the Chief Controlling Revenue-Authority [for the local area in which the High Court is situated.]

(3) The Collector within the local limits of whose revenue-jurisdiction the property of the deceased or any part thereof is, may at any time inspect or cause to be inspected, and take or cause to be taken copies of, the record of any case in which application for probate or letters of administration has been made; and if, on such inspection or otherwise, he is of opinion that the petitioner has under-estimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the petitioner (either in person or by agent) and take evidence and inquire into the matter in such manner as he may think fit, and, if he is still of opinion that the value of the property has been under-estimated, may require the petitioner to amend the valuation.

(4) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the court before which the application for probate

or letters of administration was made, to hold an inquiry into the true value of the property:

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the *inventory required by section 277* of the Indian Succession Act, 1865, or, as the case may be, by section 98 of the Probate and Administration Act, 1881

(5) The Court, when so moved as aforesaid, shall hold, or cause to be held, an inquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. *The Collector shall be deemed* to be a party to the inquiry.

(6) For the purposes of any such inquiry, the Court or person authorized by the Court to hold the inquiry, may examine the petitioner for probate or leters of administration on oath (whether in person or or by commission), and may take such further evidence as may be produced to prove the true value of the property The person authorized as aforesaid to hold the inquiry shall return to the Court the evidence taken by him, and *report the result of the inquiry*, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(7) The finding of the Court recorded under sub-section (5) shall be final, but shall not bar the entertainment and disposal by the Chief Controlling Revenue Authority of any application under section 19E.

(8) The Local Government may make rules for the guidance of Collectors in the exercise of the powers conferred by sub-section (3).

NOTES.

Change in law.—The words "for the local area in which the High Court is situated" were substituted for the words "of the Province" by section 3 (2) of the Court Fees (Amendment) Act, 1901 (10 of 1901).

Note.—Sections 19H, 19I, 19J, 19K were inserted by the Court Fees Amendment Act, 1899 (Act XI of 1899), section 2.

The Indian Succession Act, 1865 was Act X of 1865 The present Act is Act XXXIX of 1925.

The Probate and Administration Act was Act V of 1881. The present Act is Act 39 of 1925

Sec 277 of Succession Act, 1865 and sec 98 of P. & A Act of 1881 correspond to sec 317 of Act 39 of 1925

Instructions on the working of sec 19H of Court Fees Act, 1870 (as amended by Act XI of 1899) are embodied in Letter No 980-S R, dated Calcutta, the 10th February 1902, (see Stamp Manual). Under this letter the Civil Courts are not required to check the valuation put upon the various items *of property set out in the affidavit, but merely to satisfy them*selves that proper fees have been paid upon the valuation declared by the Collector, the correctness of which valuation it is the duty of the Collector to check on receipt of notice of application from the Civil Court.

There are similar letters in other Provinces (see Stamp Manuals for such Province).

Enquiry by Civil Courts and the Registrar of the High Court—The Civil Courts ought not to concern themselves to check the valuation put upon the various items of property set out in the affidavit of valuation according to the form prescribed in the third schedule of the Court Fees Act, but should merely satisfy themselves that the appropriate fee has been paid on the valuation declared by the executors themselves. The duty of checking the correctness of valuation is entirely a matter for the revenue authorities on receipt from the High Court of notice of grants of (application for) probates or letters of administration as the case may be

The Registrar should merely satisfy himself that all the proper duty has been paid in accordance with and upon the basis of the figures which the executors themselves put forward in their affidavit of valuation. If that valuation is not correct, it is the business not of the High Court but of the revenue authorities to make such investigation as they think fit, and if they are so advised to move the Court under sub-sec. (4) of sec 19H of the Court Fees Act, 1870. That section provides ample machinery for ensuring that sooner or later the proper amount of duty will be paid by the executors. *In the Goods of Aratoon Stephen*, 32 C.W N. 799. See also *In the goods of Omda Bibee*, 26 Cal. 407: 3 C.W.N. 392.

"By section 19H, notice of every application for probate or Letters of Administration has to be given to the Chief Co

trolling Revenue Authority and measure provided whereby th revenue authorities may check valuations and recover prope court-fees," *In re Bhubaneswar Trigunait*, 52 Cal. 871: 2 C W N. 879. 95 I.C 529: 1925 A I R. 1101 (Cal.). See als *In the Goods of Tarun Kumar Ghose, deceased*, 62 Cal 11 where the father of the deceased minor was made to pay dut although the money standing in the name of the deceased mino was his own money

Procedure in moving for an enquiry.—In moving the Cour for an enquiry into the true value of the assets of decease person under 19H of the Court Fees Act, it is not enough to the Collector simply to make an application for enquiry he shoul place be needed, facts The Act does not specify in what way or by whom th expense of inquiry should be met It would be the duty of th Court, if possible, and if the circumstances permit, to hold th inquiry itself and so save further expense to the parties, *In th Goods of J R A Stevenson*, 6 C W N 898

Review—Where in an enquiry under section 19H of th Court Fees Act the Government Pleader was not ready to g on with the case on the date fixed and the Court dismissed th enquiry on the ground of negligence, but afterwards granted review "for other sufficient reason" and reopened the case, held that the grant of review was bad, *Bindu Basini Raychowdhuran v Secretary of State for India in Council*, 51 Cal. 70: 40 C L.J 163· 79 I C. 745: 1924 A I.R. 744 (Cal).

Finding by District Judge—Final—Where an applicant fo probate refuses to amend the valuation of the estate to th satisfaction of the Collector, and the latter applied to the Distric Judge asking that an enquiry be made into the true valuatio of the property, the finding of the District Judge as to the valu of the property under sub-section (5) of section 19H of th Court Fees Act, is final and no appeal lies against it by virtue of the provisions contained in sub-section (7) of that section, but the refusal by the District Judge to consider the allegations of the applicant that other properties have been erroneously included may be revised, *Chinmatha Nath Pal Chowdhury v Secretary of State for India in Council*, 78 I.C. 901: 1925 A I R 357 (Calcutta).

Costs of enquiry—A Court has no power to award costs in a proceeding under section 19H of the Court Fees Act, for ascertaining the valuation of properties in respect of which Letters of Administration have been granted There is no provision for the realisation of any costs which may be incurred in connection with such an enquiry, *Hridoy Mohini Dasi v*

Secretary of State for India in Council, 50 Cal 239: 27 Ind. Cas 472: 1923 A I R 406 (Calcutta).

Limitation.—Where after the issue of letters of administration with a copy of the will annexed, the applicant for the same filed a list of immoveable properties on 13th May, 1905, belonging to the estate of the deceased and then filed a list of moveable properties on 17th August, 1905, but no document which may be said to contain under section 98 of the Probate and Letters of Administration Act, a full and true estimate of the properties of the deceased, and after several attempts by the Collector to obtain the inventories, on 16th July, 1908, the Collector applied under 19H, cl (4) of this Act to the District Judge to enquire into the true valuation of the estate *Held* by the Judicial Committee of the Privy Council that the period of six months mentioned in cl (4) is to run from the lodging of the inventory required by the statute and that no inventory having been filed which satisfied the statutory requirements namely, "a full and true estimate of all the property in possession," the application by the Collector was not barred under cl (4) of section 19H of the Court Fees Act (The decision does not say that a single document containing a full and true estimate is to be filed), *Rajkumari Bhubaneswari* v *The Collector of Gaya*, P C. 41 556: 18 C.W.N. 153: 19 C L J. 136: 21 Ind Cas. 915· 12 A.L J. 69: 16 Bom L R. 95: 1914 M.W N. 13· 26 M.L J. 5: 15 M.L.T. 87.

The period of six months prescribed in the proviso to sub-sec. (4) to sec. 19 (H) Court Fees Act, must be taken to run from the time of the presentation of a *revised* inventory, *Deputy Commissioner, Lucknow* v *Mrs M D. Aikman*, 9 Luck 370: 11 O.W.N. 78: 1934 A.I.R 72 (Oudh): 148 I.C 247.

Payment of court-fees in respect of probates and letters of administration.

19I. (1) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the third schedule, and the Court is satisfied that the fee mentioned in No. 11 of the first schedule has been paid on such valuation.

(2) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the Collector under section 19H, sub-section (4).

NOTES.

Note.—The valuation required to be put in under this section should be checked by the Collector and not by the Civil Court. The Civil Court is to send the notice of application to the Collector and on receipt of a report from the Collector is to see whether proper fee has been paid on that valuation The Civil Court is not to check the valuation by the Collector See cases under s. 19H *supra*.

Scope.—The question whether a certain property is trust property or not and has been included in List B through mistake the matter is covered by s 19I and it would be for the High Court to decide before granting probate whether the property was or was not rightly included in Sch. B, and in any event the decision of the Financial Commissioner would be *ultra vires* *Feroze A Cooper* v. *The Secretary of State for India*, 111 I C 692· 1928 A I.R. 947 (Lah). See also *In the matter of Dasi Manavala Chetty*, 33 Mad 93: 19 M L.J. 591: 4 I.C. 1064

This section prohibits an order by Court entitling a petitioner to a grant of Probate or Letters of Administration until the petitioner has filed in Court a valuation of the property in the form set out in the 3rd Schedule of the Court Fees Act and the Court is satisfied that proper fees have been paid on such valuation, *Maung Ye Gyan* v. *Ma Hme*, 1 L B R. 228.

Section 19I contemplates the prepayment of duty before an order for grant of probate is made, *Nikunja Rani* v. *Secretary of State for India*, 43 Cal 230: 20 C.W.N. 504: 2 C L J. 375: 30 Ind. Cas 460; *Swarnamoyee* v. *The Secretary of State for India*, 43 Cal 625: 20 C W.N 472: 22 C.L J. 370: 3 I.C. 394

"The Court is not required to satisfy itself that the valuation is correct but only that the fee mentioned in No. 11 of the First Schedule has been paid on such valuation. *In re Bhubaneswari Triqunait*, 52 Cal. 871: 29 C W.N. 879 (882): 95 I.C. 529: 192 A.I.R 1021 (Cal.).

An executor cannot be compelled to pay probate duty till the Collector has finished his investigation into the valution of the property, *Monmohini Dassi* v. *Taramoni*, 1929 A I.R 73 (Cal.).

Construction.—The expression 'valuation of the property in sec. 19I must mean valuation of the property of the deceased *Deputy Commissioner, Lucknow* v. *Mrs M. D. Aikman*, 9 Luck 370: 11 O W.N. 78: 1934 A.I.R. 72 (O.): 148 I C. 247.

Administration for a part of the property.—The court fee payable for the issue of Letters of Administration in respect of part of the property is to be calculated on the value of th

part and not on the value of the entire property, *Gurbachan Kaur* v. *Satwant Kaur and others*, 1925 A I R 493 (Lah). 7 L L J 288: 26 P L R 608: 90 I C 620 But in *In the goods of Girish Chunder Mitter*, 6 Cal 483 the Calcutta High Court held that in all cases general Letters of Administration to the estate of a deceased Hindu is to be taken out for the immoveable as well as the moveable property See also *In the goods of Ram Chand Seal*, 5 Cal 2; *Framji Dorabji Ghaswala* v *Adarji Dorabji Ghaswala*, 18 Bom 337

Grant cannot be delayed—The grant of a probate to the petitioner, after she has filed the valuation in accordance with section 19H (1) of the Court Fees Act and paid proper court-fees, cannot be delayed simply because Collector has failed to move under section 19H (4) of the Court Fees Act *In Re Srimoti Prasanna Moyee Basu, widow of Kritanta Kumar Bosu*, 40 Ind Cas. 576

Assessment of duty.—*Effect of amendment*—Where an application for probate was made on the 29th March, 1922, and on 30th March, 1922, the estate was valued and the court-fees paid, but the Will was proved on the 18th April, 1922 after Amending Act has come into force, held that the court-fees were correctly paid under the old law and the Amending Act does not apply as the fee payable had been paid before the Amending Act came into operation, *Thaddeus Nahapiet* v. *The Secretary of State for India*, 39 C L J 209: 1924 A.I.R. 987 (Cal.): 81 I.C. 751.

The probate duty is to be levied on the value of the estate as at the time of making the application. Court-fees ought to be levied as a preliminary on the valuation put forward by the applicant for probate, but the duty chargeable may subsequently be revised as a result of reference made by the Collector under s 19H, Court Fees Act. *In the goods of R. N. Clark*, 14 Lah. 526: 34 P.L R. 809: 148 I.C 279: 1933 A.I R. 936 (Lah).

Contra.—The law in force at the date of the grant is the law which must be applied in deciding the amount of court-fees payable, *i e*, whether the court-fees are payable under the old Act or under the amended Act, *Gangaram Tillockchand* v. *The Chief Controlling Revenue Authority, etc*, 52 Bom. 61: 29 Bom. L.R. 1511: 106 I.C. 66: 1927 A.I R 643 (Bombay).

Undertaking by Counsel—Section 19I (1) of the Court Fees Act is no bar to the hearing of an application previous to deposit of the court-fees, when counsel for the petitioner expresses his willingness to pay any court-fees which may be found due once it is decided that the application for the grant of administration be accepted, *Deputy Commissioner of Lucknow* v. *Taj Kihen*, 8 Ind. Cas 695.

19J. (1) Any excess fee found to be payable
Recovery of penalties, etc
any inquiry held under secti 19H, sub-section (6), and a penalty or forfeiture under section 19G, may, on t certificate of the Chief Controlling Revenue-Authori be recovered from the executor or administrator as it were an arrear of land-revenue by any collector any part of British India.

(2) The Chief Controlling Revenue-Authority m remit the whole or any part of any such penalty forfeiture as aforesaid, or any part of any penalty und section 19E or of any court-fee under section 19E excess of the full court-fee which ought to have be paid.

NOTES.

Penalty—imposition—The Collector cannot, without movi the Court for an enquiry under section 19H into the true va *of the assets, impose a penalty upon the applicant, Nikunja R Chowdhurani v Secretary of State for India,* 20 C.W.N 5 43 Cal. 230: 22 C L J. 375: 31 Ind Cas 460.

Penalty—recovery—The court-fees and the penalties m be recovered under the provisions of the Public Dema Recovery Act.

Sections 6 and 28 not to apply to probate or letters of adminitration

19K. Nothing in section 6 section 28 shall apply to proba or letters of administration.

NOTES.

Section 19 (VIII) and Art. 11 of Schedule I of the Co Fees Act exempt from liability to fees Probate or Letters Administration where the amount or the value of the prope in respect of which the grant is made, does not exceed thousand rupees. This exemption, however, applies only cases where the gross value of the property does not exceed thousand. The fee mentioned in No 11 of Schedule I is to paid on the valuation mentioned in Schedule III and is to paid on the net value of the property where the gross value above and the net value is below one thousand rupees, a fee two per cent. is payable on the net value, *Collector of Ma v. Nirode Kamini Debya,* 17 C.W.N. 21: 15 Ind. Cas 6 But this case was not followed in *Nikunja Rani Chowdhur*

, *Secretary of State for India*, 43 Cal 230. 20 C.W.N. 504: 2 C.L.J. 375: 31 Ind. Cas 460.

The stamps are not to be filed with the application for robate or Letters of Administration The court-fee stamps e paid into Court after the will is proved or issue is ordered d an application is made for obtaining the same *Pa Ke* v. *aw Bo He*, L.B.R (1893-1900) 623

CHAPTER IV.

Process-fees.

20. The High Court shall, as soon as may be, make rules as to the following matters.—

Rules as to costs of processes

(*i*) The fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil [and Revenue] Courts established within the local limits of such jurisdiction;

(*ii*) *the fees chargeable for serving and executing* processes issued by the Criminal Courts established within such limits in the case of offences other than offences for which police-officers may arrest without a warrant; and

(*iii*) the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes

The High Court may from time to time alter and d to the rules so made

All such rules, alterations and additions shall, after being confirmed by the Local Government * * * be published in the local official Gazette, and shall ereupon have the force of law.

Confirmation and publication of rules

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

NOTES.

Change in law.—In the Punjab, the words "and revenue" are repealed, *see* the Punjab Land Revenue Act, 1887 (17 of 1887)

The words "and sanctioned by the Governor-General of India in Council" were repealed by Act XXXVIII of 1920 (The Devolution Act), sec 2 and Schedule.

Note.—Sections 20 to 23 do not apply to areas to which the Burma Process Fees Act, 1910 (Bur. Act I of 1910) applies

Recovery of process fees—Process fees when not paid can be recovered under the provisions of the Public Demand Recovery Act

Power to make rules.—As to power of the Bombay High Court to prescribe fees for processes issued by Courts constituted under the Bombay Civil Court Act, 1869 (14 of 1869), *see* s. 4 of that Act As to computation of certain fees on application under s. 17 of the Agra Tenancy Act, 1901 (U.P. Act II of 1901) See also Local Rules and orders of the several Provinces and High Courts

As to power of Chief Commissioner of British Baluchistan to make rules and prescribe fees, *see* the British Baluchistan Criminal Justice Regulation, 1896 (8 of 1896), s 20 (1) (a), and the British Baluchistan Civil Justice Regulation, 1896 (IX of 1896), s 92 (a).

The High Court has no power to relax process fee rules framed by it in accordance with the provisions of section 20 of the Court Fees Act and s 93 (Order 48 Rule 1) of the Code of Civil Procedure does not give any power to any Court to depart from those rules as that section gives Court power to pass judicial orders between party and party as to who should pay the process fees. *In the matter of application of Studd*, 26 Cal 124: 3 C.W.N. 82.

Note.—But in later rules there is a provision for reduction of process fees where there are numerous persons to be served in the same or adjacent villages regarding process fees for cases pending in the High Court.

The Madras High Court in *In re Vaithilinga Pandara Sannadhi Avergal*, 1930 A.I.R. 381 (Mad.), *held* that they have

no power to accept one process fee for the common respondents and cannot consolidate

A commission issued to an Amin to make a local investigation is not a process, *Jagat Kishore Acharyea Chowdhury* v *Denonath Chukerbutty Chowdhury*, 17 Cal 281

Fees in settlement cases—Fees on processes issued by settlement officers in proceedings for settlement of rent under Part III of Chapter X of the Bengal Tenancy Act are subject to the rules framed by the High Court under s 20 of the Court Fees Act, 1870, *Revenue Circular dated 2nd March, 1994*

The Court of a Special Judge is a Civil Court, hence process fees for service of notice on respondents in an appeal before the Special Judge are to be paid according to the scale laid down in the High Court rules framed under s 20 Rule 65 of the rules framed by the Local Government under s 189 of the Bengal Tenancy Act has no application to notices to the respondents in appeals filed in the Court of a Special Judge, *Charusila Dassi* v *The Government Pleader, Birbhum*, 58 Cal 995 35 C W N 253. 132 I C 683 1931 A I R 572 (Cal) 1931 I R 503 (Cal)

Clause III.—"The remuneration of peons, is by section 20 settled by the High Court," *Dharamchand Lall* v *Queen Empress*, 22 Cal 596 (607)

Tables of process fees

21. A table in the English and Vernacular languages, showing the fees chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

Number of peons in District and Subordinate Courts

22. Subject to rules to be made by the High Court and approved by the Local Government * * * * *,

every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto,

Number of peons in Mofussal Small Cause Courts

and for the purposes of this section, every Court of Small Causes established under Act No. XI of 1865 (to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the

ordinary original civil jurisdiction of the High Courts of Judicature) shall be deemed to be subordinate to the Court of the District Judge.

NOTES.

Change in law.—The words "and the Governor-General of India in Council" are repealed by Act XXXVIII of 1920 (The Devolution Act), sec. 2 and First Schedule.

N B—For the reference to Act XI of 1865 should be read the Provincial Small Cause Courts Act, 1887 (Act IX of 1887) under section 2 (2) of the General Clauses Act (Act X of 1897)

Rules in different provinces—For rules made under the powers conferred by this section in—

Ajmir-Merwara . .	*see* Aj. R. and O., Vol I.
Bengal . . .	*see* General Rules and Circular Orders (Civil) and Calcutta Gazette, 1921
Assam, by the High Court, Calcutta	*see* Assam Gazette, 1902, Pt. IIA, p 824
Bombay . . .	*see* Bom R and O., Vol I.
Madras . . .	*see* Mad R. and O., Vol. I, and Fort St. George Gazette, 1901, Pt. I, p. 1904
United Provinces of Agra and Oudh .	*see* United Provinces R and O, Vol I
Central Provinces .	*see* Cen Prov. R. and O.

As to Burma cf. s 41 of the Lower Burma Courts Act, 1900 (6 of 1900)

"The number of the peons to be employed for the service and execution of processes in each district is by section 22 of the Court Fees Act fixed by the District Judge, and the remuneration is by section 20 settled by the High Court. The Court Fees Act distinctly contemplates that the peons are to be employed, not only for the service of summonses, notices or orders, but for the execution of other processes, such as warrants of arrest or of attachment and distress," *Dharam Chand Lal v. Queen Empress*, 22 Cal. 596 (607).

Number of peons in Revenue Courts

23. Subject to rules to be framed by the Chief Controlling Revenue-Authority and approved by the Local Government * * * * every officer performing the functions of a Collector of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of

processes issued out of his Court or the Courts subordinate to him.

NOTES

Change in law.—In the Punjab, s. 23 is repealed, see the Punjab Land Revenue Act, 1887 (Act 17 of 1887)

The words "the Governor-General of India in Council" were repealed by Act XXXVIII of 1920 (Devolution Act) Sec 2 and first schedule

N B—For rules framed under the powers conferred by this section in—Madras, *see* Mad. R and O, Vol. I

Central Provinces, *see* Cent Prov Gazette, 1905, Pt. III, p. 570. See Assam M. R. and O.

As to U P—In U P this section has been amended by U. P Act XII of 1922

As to Burma.—See Burma Process Fees Act, 1910 (Bur Act I of 1910).

24. [PROCESS SERVED UNDER THIS CHAPTER TO BE HELD TO BE PROCESS WITHIN MEANING OF CODE OF CIVIL PROCEDURE.] REPEALED BY THE REPEALING AND AMENDING ACT, 1891 (XII OF 1891).

CHAPTER V.

OF THE MODE OF LEVYING FEES.

Collection of fees by stamps

25. All fees referred to in section 3 or chargeable under this Act shall be collected by stamps.

Stamps to be impressed or adhesive

26. The stamps used to denote any fees chargeable under this Act shall be impressed or adhesive, or partly impressed and partly adhesive, as the [Local Government] may, by notification in the [Local Official Gazette] from time to time direct.

NOTES

Change in law.—For the words "the Governor-General of India in Council," the words "Local Government" and for

the words "Gazette of India," the words "the Local Official Gazette" were substituted by Act XXXVIII of 1920 (The Devolution Act). Sec. 2 and First Schedule.

Rules.—For rules as to levy of court-fees by adhesive and impressive stamps, see Gazette of India, 1883, Part. I, p 189, but it is doubtful if those rules are in force after the amendment of this section in view of the provisions of s. 27.

Stamp to be used.—A certificate was issued on an ordinary stamp and an objection was taken that it was not properly stamped in accordance with the Court Fees Act of 1870, as required by section 17 of the Succession Certificate Act (Act VII of 1889), because it does not bear upon it the words "court-fees," as directed in the Notification of the Governor-General, No. 361, dated 18th April, 1883 The High Court held:—

"It is true that section 26 of the Court Fees Act (VII of 1870) provides that the stamp used to denote the fee chargeable under the Act 'shall be impressed or adhesive or partly impressed and partly adhesive as the Governor-General of India in Council may by notification in the Gazette of India from time to time direct,' and that by notification of the Governor-General (No 361, dated 18th April, 1883), it was provided that in case the fee chargeable should be under Rs 10, an adhesive stamp should be used, and when the fee should exceed Rs. 10, an impressed stamp, and that in both cases the stamp should bear the words 'court-fees'; but as to the direction that the stamp should bear the words 'court-fees', it is to be remarked that it is not a matter on which by the terms of section 26 of the Court Fees Act, the Governor-General in Council had authority to give any direction, and it can, therefore only be regarded as a departmental order, the non-observance of which cannot invalidate the stamp for the purposes of the act," *Annapurna Bai* v. *Lakshman Bhikaji*, 19 Bom 145.

Stamps for use in High Court only.—When the lower Court rejected a plaint after punching the stamps bearing the words "for use in the High Court only" impressed upon the back of the stamps on the ground that such stamps are for use in the High Court only, held, that such rejection was not justified. The words on the back of the stamps may have some significance for administrative purposes, but they are not capable of invalidating the stamps themselves, *Naresh Chandra Sinha* v. *Charles Joseph Smith*, 1926 A.I.R. 408 (Patna): 97 I.C. 822: 8 Pat L.T. 33.

Rules for supply, number, renewal and keeping accounts of stamps

27. The Local Government may, from time to time, make rules for regulating—

(*a*) the supply of stamps to be used under this Act,

(*b*) the number of stamps to be used for denoting any fee chargeable under this Act,

(*c*) the renewal of damaged or spoiled stamps, and

(*d*) the keeping accounts of all stamps used under this Act;

Provided that in the case of stamps used under section 3 in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the Local Official Gazette, and shall thereupon have the force of law.

NOTES

The parties ought to use as small a number of stamps as they can, *Ranee Khajooroonissa* v *Musst Rohimunnessa*, 16 W R 152

But there is no illegality in making up the stamp fee chargeable in an appeal by means of a number of stamps, *Mirza Dawd Ali* v *Syed Nadir Hossein*, 16 W R 153, *Tarinni Churn* v. *Taranath Gooha*, 12 W R 449, *Huro Monee* v *Kristo Indro Shaha*, 17 W R 220

Note.—These cases proceeded upon the footing that as there is no rule governing the use of number of stamp, the required amount can be made up by any number of small stamps.

Where the appellant being unable to procure one stamp filed his appeals with two labels with a certificate by treasurer that one label was not in stock, but the District Judge rejected the appeal held that the appeal should not have been dismissed, *Bansi Lall* v *Raghunath Sahai*, (1887) 7 All W N 212

Effect of using several stamps—If the court-fees paid are not denoted in the manner provided by rules under s 27 of the Court Fees Act, but were denoted by several stamps of lower values, the document is to be treated as unstamped Time may be extended to the party for compliance with the rules, *Tota Rajayya* v *Margoni Rajmalaya*, 26 N L R 263: 130 I C. 112: 1931 A I R 94 (Nag) See also *Jangi Pande* v. *Saudagar Sinha*, 11 P L T 708 1931 A I R 113 (Pat), where the High Court considered the question of refund of the values of separate stamps and held that the application should be addressed to the

Revenue Authorities and only granted a certificate to the par stating the facts in the form as set out in 40 Cal 365.

Rules.—For rules in Bengal under s. 27 see Bengal stat tory rules and orders Vol. II and Calcutta Gazette, 1907, Part page 432 as altered by Notification No. 7175 of 1925.

For Eastern Bengal and Assam see E. B. and A. Gazett 1908 Part II, page 642.

But now see the notification of the Government of Beng No. 3 T. S. R., dated 14th May, 1932.

In exercise of the powers conferred by clause (b) c section 27 of the Court Fees Act, 1870 (VII of 1870) and i supersession of the existing orders on the subject, the Governo in-Council is pleased to make the following rules to regulate th use of adhesive and impressed court-fees stamps in Bengal, i consequence of the abolition of impressed court-fee stamps i respect of fees upto Rs 25, namely:—

(1) In cases where the amount of fees is less than Rs 2 such fee shall be denoted by adhesive stamps bearing the word 'court-fees'

(2) In cases where the amount of fee is equal to or exceed Rs 25 and such amount can be denoted by impressed stamp bearing the words 'court-fees', adhesive stamps being employed to make up fractions of less than Rs. 25

For similar provisions in other provinces, see Stamp Manuals of each province. U. P Stamp Manual, Chap. 1B, pages 231, 234 as amended.

The Assam Government Notification No. 7865 G. J. dated the 22nd December, 1925 contains the additional paragraph—

When in any case the fee chargeable under the Act is less than Rs 25 such fee shall be denoted by adhesive stamps and when the fee amounts to or exceeds Rs. 25, such fee shall be denoted by impressed stamps.

And the Government of Bengal Notification No. 275-S R. dated the 9th March, 1907, clause 11 provides—

'A document stamped otherwise than in accordance with the preceding rules is not properly stamped within the meaning of section 28 of the Court Fees Act, 1870."

The Bihar and Orissa Government has made a similar rule

In Bombay, C. P. and U. P. there are similar provisions as to the number of stamps to be used but there is no penal clause in case of breach. The provisions for those Provinces may, therefore, be regarded as not mandatory and as mere recommendations.

See the Stamp Manual and Local Rules and Orders for each Province.

Damaged and spoiled stamps.—See the Stamp Manual for the province.

Stamping documents inadvertently received

28. No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

But, if any such document is through mistake or inadvertence received, filed or used in any Court or office, without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and, on such document being stamped accordingly, the same and every proceeding relating thereto, shall be as valid as if it had been properly stamped in the first instance.

NOTES.

Application.—Section 28 does not apply to cases where there was no stamp on the plaint when presented but supplied afterwards, *Lakha* v *Munshi Ram*, 38 P.R 1900.

Scope.—The section does not apply to probate duty. See s. 19K of this Act *In re Bhubaneswar Trigunait*, 52 Cal 871: 29 C W.N. 879 · 95 I C 879: 1925 A.I R. 1021 (Cal.).

Section 28, Court Fees Act, refers to a case where the question is not raised by a reference by the Taxing Officer under s. 5 Section 28 applies to the case where the deficiency in court-fee is noticed otherwise and the jurisdiction then will lie in a judge of the High Court before whom the deficiency is noticed, *Sarfuddin* v *M Khadim Ali Khan*, 1934 A.L.J. 643: 150 I C. 1090: 1934 A I R 807 (All.): 4 A.W.R 263.

[*N B*—This section allows the Court in which the document insufficiently stamped was filed to order the recovery of the insufficient duty.]

Construction.—*Document*—The word "document" bears the same meaning as in ss 4 and 6 of this Act. "A memorandum of appeal is consequently a document which ought to bear a stamp under the Court Fees Act, 1870, within the meaning of s. 28 of that Act," *Balkaran Rai* v. *Gobinda Nath*, 12 All 129 (139) · 10 All W.N. 39 F.B.

Head of the office.—The expression "head of the office" in section 28 does not refer to the head of the office of a Court, or at any rate to the head of the office of a High Court, but to the head of the public offices as, for instance, the Board of

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(1) In cases where the amount of fees is less than Rs 25 such fee shall be denoted by adhesive stamps bearing the words 'court-fees'

(2) In cases where the amount of fee is equal to or exceeds Rs 25 and such amount can be denoted by impressed stamps bearing the words 'court-fees', adhesive stamps being employed to make up fractions of less than Rs 25

For similar provisions in other provinces, see Stamp Manuals of each province U. P. Stamp Manual, Chap. 1B, pages 233, 234 as amended.

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Damaged and spoiled stamps.—See the Stamp Manual for the province.

28. No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

Stamping documents inadvertently received

But, if any such document is through mistake or inadvertence received, filed or used in any Court or office, without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct, and, on such document being stamped accordingly, the same and every proceeding relating thereto, shall be as valid as if it had been properly stamped in the first instance.

NOTES.

Application.—Section 28 does not apply to cases where there was no stamp on the plaint when presented but supplied afterwards, *Lakha* v *Munshi Ram*, 38 P.R 1900

Scope.—The section does not apply to probate duty. See s 19K of this Act *In re Bhubaneswar Trigunait*, 52 Cal. 871: 29 C.W.N 879 95 I C 879 1925 A I.R. 1021 (Cal).

Section 28, Court Fees Act, refers to a case where the question is not raised by a reference by the Taxing Officer under s. 5. Section 28 applies to the case where the deficiency in court-fee is noticed otherwise and the jurisdiction then will lie in a judge of the High Court before whom the deficiency is noticed, *Sarfuddin* v *M Khadim Ali Khan*, 1934 A.L J. 643: 150 I C 1090: 1934 A I R 807 (All): 4 A.W.R 263.

[*N B*—This section allows the Court in which the document insufficiently stamped was filed to order the recovery of the insufficient duty]

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Head of the office.—The expression "head of the office" in section 28 does not refer to the head of the office of a Court, or at any rate to the head of the office of a High Court, but to the head of the public offices as, for instance, the Board *of*

Revenue, *Balkaran Rai* v. *Gobind Nath Tewari,* 12 All. 129: All. W N 39.

The second paragraph to s. 28.—Object.—"The object of the second paragraph of s 28 is to empower the Court or the Judge, when such an improperly stamped document has through mistake or inadvertance been received, filed or used in the Court, to make an order that such document may be properly stamped, and on being so stamped to give effect to it as a document as valid as if it had been properly stamped in the first instance," *Balkaran* v *Gobind Nath,* 12 All 129 (150): 10 All W N. 39 F B , *Dilwar Husain* v. *Bhagwant Das,* 27 (1907) All. W N 63. 4 All L J. 130.

Application of s. 149, C. P. C.—An appeal must be taken to be filed on the date on which the memorandum of appeal is properly stamped. An appeal was decided by a District Judge on 3rd March, 1915. A petition for revision agasnit that decision was filed on 4th June, 1915. On 7th February 1916, after hearing both parties, the Judge in chambers held that an appeal lay in the case and gave time to the appellants to make up the deficiency in court-fees on the memorandum of appeal. The deficiency was made up on 11th February, 1916 On the appeal coming on for hearing before a Division Bench, the respondent objected that the appeal was barred by time: held (1) that the order of the Judge in Chambers must be taken to have been made subject to all just exceptions; (2) that the memorandum of appeal must be taken to have been filed on the date on which the deficiency in court-fees was made up, and was, consequently, barred by time: (3) that section 149 of the C. P. C. was inapplicable to the case *Umed Ali* v. *The Municipal Committee, Jhang Maghiana,* 2 Lah 1: 2L.L.J. 486: 8 P W R. 1920: 56 I C 143: 1922 A I.R 233 (L.). See page 37 *et seq, supra* for other cases.

The Lahore High Court held that if after the mistake in the amount of court-fees paid being pointed out, Counsel refused to rectify the mistake , he is not entitled to any extension of time under section 149, C. P. C., *Tikkan Ram* v. *Bosa Ram.* 67 Ind. Cas 106.

As to deficiency of court-fees made up after the expiry of the time for filing the appeal See under s. 6, *supra*

After the trial Court has extended the time, the appeal Court cannot interfere with the judicial discretion exercised. *Priyanath* v. *Meajan,* 24 C.L J. 88 See also cases under s 6 *supra* And an order excusing delay in payment of deficit court-fees, is according to the practice of the Madras High Court, made subject to objection at the final hearing, *Acharath Parakhat* v *Acharath Bappam,* 23 Ind. Cas. 946.

If deficiency in court-fees is remedied within the time allowed by the Court, then s 28 validates the document from the date of presentation, *U Shin* v *Maung Tha Gywe*, 8 Rangoon 538: 129 I C 500 1931 A I R 38 (Ran): 1931 I R. 68 (Ran)

Miscalculation—Where the insufficiency was due to miscalculation on the part of the plaintiff and deficiency was supplied after the period of limitation, held, that the suit must be dismissed as it is not the duty of the office to point out miscalculation, *Chaterpat* v. *Jagram*, 27 All 411: (1905) 25 All.W N. 127: 2 All L J 55; *Jagram* v *Chaterpat*, (1904) 24 All W N. 133; *Muhammad Ahmad* v *Muhammad Sirajuddin*, 23 All W N. 118

Mistake—Mistake is a slip made, not by design, but mischance, *Hari Ram* v. *Akbar Hossein*, 29 All 749: 4 A L J. 36: (1907) 27 A.W N. 253: 2 M L T. 275

Mistake or Inadvertence"—means mistake or inadvertence on the part of the Court and its officers and not on the part of the parties or their advisers, *Balkaran* v. *Gobinda Nath*, 12 All. 129: 10 All W N. 39 F B.; *Dilwar Husain* v. *Bhagwat Das*, 27 All W.N. 63: 4 All.L.J. 130.

Mistake of plaintiff—When by a mistake of plaintiff, and not of the Court or of any officer of the Court, a plaint was filed upon insufficient court-fees and this was not discovered until after the period of limitation for the suit had expired, it was held that the suit was barred, *Ram Tahal Singh* v. *Dubri Rai*, 28 All 310: (1906) 26 All.W.N. 21: 3 All L.J. 838; *Munro* v. *The Cawnpore Municipal Board*, 12 All 57: 9 All W.N. 197; *Muhammad Ahmad* v. *Muhammad Sirajuddin*, 23 All. 423; *Balkaran* v *Gobind*, 12 All 129. 10 All W N. 39 F.B.

A mistake of law as to the court-fee payable brings the case within section 28 of the Court Fees Act, *Haricharan Dey* v *Baikuntha Nath*, 21 Ind. Cas. 866; *Valambal Aminal* v. *Vythilinga Mudaliar*, 24 Mad. 331; on appeal in 25 Mad. 380: 11 M L J. 119.

Mistake of a trivial nature.—Where through mistake a memorandum of appeal was insufficiently stamped, but the mistake was of such a trivial nature that by exercise of due care and attention it could have been avoided, the Court refused to allow the appellant time to pay proper court-fees, *Fatteh Singh* v. *Babu Ram*, 67 Ind Cas 130 (Punjab).

Mistake of officer.—If the plaint be received in office through *mistake or inadvertence* of the officer of Court, then plaintiff is entitled to the benefit of s. 28 of the Court Fees Act, *Hasibulnissa* v. *Ghafurullah Khan*, 29 All. 382: 22 All.W.N. 110 4 All L.J. 363; *Anupa* v. *Madho Singh*, 22 All.W.N. 1[illegible] *Debendra Mohan Rai* v. *Sona Kuar*, 21 All.W.N. 21.

NOTES.

When a Revenue Court returns a plaint for presentation to the Civil Court as regards part of the claim, the party is not exempted under section 29 of the Court Fees Act from payment of the court-fees, *Ganda Ram* v. *Sain*, 132 P.R 1892.

30. No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Cancellation of stamp

Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

NOTES

Stamps with the name of different purchasers.—Where a plaint was stamped with an impressed stamp and an adhesive stamp but the adhesive stamp had the name of a different attorney and a different date and the punching officer refused to punch it *Held*, that the punching officer was right and that the attorney should have placed before the Registrar the special circumstances to enable him to extend the rules and the practice in the original side amongst attorneys of accommodating each other in respect of stamps not used was deprecated *George Gerson* v *Radha Kissen*, 6 C.W.N. 785.

Return of plaint by Court after cancellation of stamp—A Court when returning a plaint for presentation to proper Court under Order VII, Rule 10 of the Code of Civil Procedure cannot be said to be acting upon it within the meaning of section 30 of the Court Fees Act and the plaintiff should not be required to pay court-fees over again, *S. Visvesvara* v *T. M Nair*, 35 Mad. 567: 21 M.L.J 533: 10 M.L.T. 29: 10 Ind. Cas 201. See also *Jagjivan* v. *Magdum Ali*, 7 Bom 487 *Kandu* v. *Konda*, 8 Mad. 62; *Prabhakar Bhat* v. *Vishwambhar Pandit*, 8 Bom. 313 F.B.

CHAPTER VI.

MISCELLANEOUS.

t

31. (i) *Whenever an application or petition containing a complaint or charge of an offence, other than an offence for which police-officers may arrest* *ut warrant, is presented to a Criminal Court, the t, if it convicts the accused person, shall, in addition penalty imposed upon him, order him to repay to omplainant the fee paid on such application or on*

iment of fees applications to courts

(ii) In the case mentioned in section 18, the Court, onvicts the accused person, shall, in addition to the ty imposed upon him, order him to repay to the lainant the fee, if any paid, by the latter for the ination.

(iii) When the complainant has paid fees for serv-rocesses in either of the cases mentioned in the and second paragraphs of this section, the Court, onvicts the accused person, shall in addition to the ty imposed upon him, order him to repay such to the complainant.

(iv) All fees ordered to be repaid under this section be recovered as if they were fines imposed by the t.

NOTES.

lteration in law.—This section has been re-enacted as n 546A of the Code of Criminal Procedure (Act V of 1898) as amended by Act XVIII of 1923 whereby appellate Courts are also empowered to pass similar orders and order simple imprisonment

S 546A (1) Whenever any complaint of a non-cognisable offence is made to a Court, the Court, if it convicts the accused, may, in addition to the penalty imposed upon him, order him to pay to the complainant—(a) the fee (if any) paid on the petition of complaint or for the examination of the complainan

and (*b*) any fee paid by the complainant for serving processes on his witnesses or on the accused, and may further order that in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days.

(2) An order under this section may also be made by an appellate Court or by the High Court when exercising its powers of revision.

Scope.—An Order under section 31 of the Court Fees Act directing an accused to pay the complainant the amount paid in court-fees by the latter, can only be passed where the offence complained of was a non-cognizable one, *Mingan* v. *Emperor*, 80 I C 56 (All.).

In cognizable cases the accused should not be ordered to pay costs to the complainant, *Maung San Myin and others* v. *King Emperor*, 80 I C. 187: 1923 A.I.R. 245 (Rangoon).

Nature of the order to pay the fee.—Where the magistrate convicted two accused and ordered them to pay court and process fees in equal shares but the appellate Court acquitted one of them and ordered the other to pay the whole amount, *held* that court-fees ordered to be paid under section 31 of the Court Fees Act are recoverable as if they are fines imposed by the Court, but they are not part of the fine imposed as punishment for the offence *In re Vemuri Seshamma*, 26 Mad 421. But see *Queen Empress* v *Tangavelu Chetti*, 22 Mad 153, where it was held that an order to pay fee under section 31 is an integral part of the sentence and such fee must be treated as a fine imposed by the Court. In this case the Assistant Magistrate's order was that it should be paid out of the fine collected, hence the order cannot be said to be under section 31. See also *In re Ediga Thimmiah*, 47 Mad 914: 1925 A.I.R. 136 (M.): 82 I C. 141

A person who was convicted by a Deputy Magistrate of having caused hurt, was ordered to pay a fine of Rs. 15, and also complainant's costs of the prosecution. In the month following the conviction, the Deputy Magistrate issued a warrant for the collection of Rs. 12-4 from the accused, of which Rs. 2-4 was leviable under section 31 of the Court Fees Act as court-fee paid by the complainant, and Rs 10 under section 545 of the Code of Criminal Procedure for two fees of Rs. 5 each paid by the complainant to the medical officer for a certificate and for giving evidence in the case. Objection having been made to the recovery of these sums, the case was referred to the High Court for orders. *Held*, that the levy of court-fees was warranted by section 31 of the Court Fees Act, which is not modified by section 545 of the Code of Criminal Procedure, *Queen Empress* v. *Yamana Rao*, 24 Mad. 305.

Order for repayment is in addition to penalty imposed—This section directs that the order for repayment of the process fees and stamp must be in addition to penalty imposed An order passed by a Magistrate under section 31 of the Court Fees Act, directing an accused person to pay to the complainant, the court fees on the petition of complaint is no part of the sentence so as to make it a sentence of fine within the meaning of section 413 of the Code of Criminal Procedure of 1882, *Madan Mundul v Haran Ghose*, 20 Cal 687. followed by *Emperor v. Karuppana Pillai*, 20 Mad 188 Therefore an appellate Court is not competent to set aside an order by the trying Magistrate under section 31 of the Court Fees Act, *Emperor v Maddipatla Subbarayudu*, 31 Mad 547: 5 M L T. 223

The order for payment to the complainant of the Court and process fees paid by him must be *in addition* to the fine imposed and not out of the fine imposed, *Crown v Po Hlaw*, 1 L B.R 9

Maintenance order—The Court cannot order the defaulter to pay to the complainant the amount of court-fee paid *In the matter of Pali*, Bom H C Ref No. 118 of 1889

Workman's breach of contract.—Magistrate cannot order repayment of the amount of stamps, *Emperor v. Dhandu Krishna*, 6 Bom L.R 255

Costs ordered under section 22 of the Cattle Trespass Act—Illegal seizure and detention of cattle is not an offence within the meaning of section 31 of the Court Fees Act. Hence Courts are not competent to order repayment of the amount of stamp, *Reg v Avij Bin Naru*, 8 Bom. H. C. Cr. Ca. 22. But see section 4 (o) of the Criminal Procedure Code (V of 1898) and section 19 of the Court Fees Act. See also *Sheikh Hussain v. Sanjivi*, 7 Mad 345; *Queen Empress v. Khajabhoy*, 16 Mad 423; *King-Emperor v The Nyo U and others*, 4 L B R. 11

32. [Amendment of Act VIII of 1859 and Act IX of 1869] Repealed by the Repealing and Amending Act, 1891 (XII of 1891).

Admission in criminal cases of documents for which proper fee has not been paid

33. Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in section 4 or section 6 shall be deemed to prohibit such filing or exhibition

NOTES.

The word 'document' has not been defined in this Act. In this section the word refers to petition of complaint in a criminal case or a statement reduced to writing in a Criminal Court. This section empowers a Magistrate to admit an insufficiently stamped document in cases where it is necessary to do so to prevent failure of justice. This section does not refer to remission of duty as in section 18 of this Act.

Sale of stamps

34. (1) The Local Government may from time to time make rules for regulating the sale of stamps to be used under this Act, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

(2) All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

(3) Any person appointed to sell stamps who disobeys any rule made under this section, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

NOTES.

Change in law.—This section was substituted for the previous one by Repealing and Amending Act XII of 1891, Sch II

Licensed vendors of stamps in Calcutta at the High Court, the Custom House, the Calcutta Collectorate, the Police Court and the Small Cause Court and in the 24-Perganas at the Alipore need not put in the dates of sale on the stamps *vide* rules *infra*, dated 22nd September, 1932.

Substitution of one stamp for another—Removing a new court-fee stamp from a document and substituting a used one with alteration of figures thereon is alteration of paper, under section 477A of the Penal Code, *Emperor* v. *Bibudhananda Chakraburti*, 47 Cal. 71: 54 Ind. Cas. 892.

Sale of stamp—Sub-section 3 contemplates the case of a thief selling a stolen stamp for value, although the thief cannot give a legal title by the transaction, *Queen Empress* v. *Virasami*, 24 Mad 319

Under old law sale of court-fee stamps without authority was not offence, *Emperor* v. *Jallu*, 4 All 216: 2 All W.N 23

Exchange of stamps.—Where a mukhtear who has purchased a Court Fee Stamp for one client transfers it to another client in exchange of another stamp of the same value to be delivered later on, *held*, that there was no sale within the meaning of section 34 of the Court Fees Act and the conviction of mukhtear was set aside, *Kedar Nath Shaha* v. *Emperor*, 30 Cal 921: 7 C W.N 704; *Emperor* v *Abdul Hakim*, 133 I C 645

Gift of stamp—An opinion was expressed that a person can make a gift of a court-fee stamp to another, *Bibi Chandoo* v. *Jawala Pershad*, 253 P L R 1911· 169 P W R 1911 11 Ind Cas 840

If a pleader's Munshi without obtaining refund on a stamp alters the name on the stamp and uses it for the first time for another client the accused cannot be convicted under s 468 I. P C read with s 34 of the Court Fees Act in the absence of evidence that he did so dishonestly or fraudulently, or merely to save himself from trouble The saving of the small charge in making refunds would not indicate a guilty mind The accused was given the benefit of doubt, *Emperor* v *Abdul Hakim*, 32 P L R 432: 133 I C 645 1931 A I R. 337 (Lah): 1931 I R 821 (Lah) 32 Cr L J 1051

]For **Bengal** only—by Bengal Act VII of 1935—

New section 34A

After section 34 of the said Act, the following section shall be inserted, namely·—

Enlargement of time

"34A Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Act, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired."

NOTES

It was deemed advisable to provide for extension of time in this Act]

Power to deduce or remit fees

35. [The Local Government] may, from time to time, by notification in the [local official Gazette] reduce or remit, in the whole or in any part of [the territories under its administration], all or any of the

fees mentioned in the first and second Schedules to this Act annexed,

and, may in like manner, cancel or vary such order

NOTES.

Change in law.—For the words "British India" the words "the territories under its administration" were substituted by Act XXXVIII of 1920 (The Devolution Act).

The words "Local Government" and "local official Gazette" weer substituted for the words "Governor-General of India in Council' 'and "Gazette of India" by Devolution Act, 1920 (Act XXXVIII of 1920) section 2, and first schedule.

]For **Bengal** only—by Bengal Act VII of 1935—

For section 35 of the said Act, the following section shall be substituted, namely:—

Subsection of new section 35

"35. (1) The Local Government may from time to time subject to such conditions or restrictions as it may think fit to impose, by notification in the "Calcutta Gazette", suspend the payment of or reduce or remit, in the whole of Bengal or in any part thereof, all or any of the fees mentioned in the first and second schedules to this Act annexed and may in like manner cancel or vary such order.

Power to suspend, reduce or remit fees.

(2) The Local Government may from time to time by rules prescribe the manner in which any fee the payment of which is suspended under sub-section (1) may be realised and for this purpose direct that such fee may be recovered as a public demand."]

36. Nothing in Chapters II and V of this Act applies to the commission payable to the Accountant-General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary.

Saving of fees to certain officers of High Courts.

SCHEDULE I

[*Ad Valorem Fees.*]

ARTICLE 1.

Number.		Proper Fee.
1. Plaint [written statement pleading a set-off or counter-claim] or memorandum of appeal (not otherwise provided for in this Act) [or of cross-objection] (*in any suit between landlord and tenant for an arrear of rent—added in C P*) presented to any Civil or Revenue Court except those mentioned in section 3 (*in suits other than those provided in Art. 1—Art. 1-A—added in C. P*)	When the amount or value of the subject-matter in dispute does not exceed five rupees,	Six annas.
	when such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees,	Six annas.
	when such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees,	Twelve annas.
	when such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees,	Five rupees.
	when such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, upto ten thousand rupees,	Ten rupees.
	when such amount or value exceeds ten thousand rupees, for every five hundred rupees or part there-	

Number.		Proper Fee
	of, in excess of ten thousand rupees, up to twenty thousand rupees,	Fifteen rupees
	when such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, upto thirty thousand rupees,	Twenty rupees.
	when such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees,	Twenty rupees.
	when such amount or value exceeds fifty thousand rupees, for every five thousand rupees or part thereof, in excess of fifty thousand rupees	Twenty-five rupees.
	Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees	

NOTES

N.B.—This rate of fees applies to those provinces where the rates have not been changed by Amending Acts.

Change in law.—The words "written statement pleading a set-off or counter-claim" after the word "plaint" and the words "or of cross objection" after the bracket, were substituted by section 155 and Schedule 4 of the Code of Civil Procedure (Act V of 1908)

Local Amendments.—This Article has been amended in Bengal (by Bengal Act IV of 1922), in Madras (by Madras Act V of 1922), in Bombay (by Bombay Act II of 1932), in B. & O. (by B. & O. Act I of 1922), in Punjab by Punjab Act VII of 1922 as amended by Punjab Acts I and VI of 1925, in U. P. by U. P. Act III of 1932 and in C. P. by C. P. Act XVI of 193

See the Tables of Rates of *ad valorem* fees for each province, vide the Appendices, *infra*

Fees payable in suits instituted and decided by Union Courts under the Bengal Village Self-Government Act, 1919 (B C Act V of 1919):—

Sec 90 (1) In all suits instituted in and decided by a Union Court a fee of one anna in the rupee shall be payable on the amount of the claim upto twenty-five rupees, and an additional fee of half-an-anna for every rupee of the claim above twent-five rupees.

(2) If the claim be decreed in full, the fee shall be realized from the judgment debtor together with the amount decreed

(3) If the amount be decreed in part, the fee shall be realized *pro rata* from the decree-holder and the judgment-debtor

(4) If the suit be dismissed, the fee shall be realized from the plaintiff

(5) All such fees realized by the Union Court shall be credited to the Union fund and shall not be paid to either party *N B*—But this section has been proposed to be amended in 1935

Note.—Under this Article the court-fees payable on a memorandum of appeal or cross objection is to be assessed *ad valorem* on the value of the subject-matter in dispute; but as regards plaints the amounts of the court-fees payable are to be calculated under section 7 of the Court Fees Act read with this Article

Application.—Article 1 of Schedule I of the Court Fees Act applies only to those cases which are not otherwise provided for under the Act, *Qyaumuddin* v *Delhi Flour Mills Company*, 47 Ind Cas 992

Application of sec. 7 to appeals.—The principles contained in section 7 of Chapter III are applicable also to appeals before the High Court, *Chunni Lal* v *Sheo Charan Lal Lalman*, 23 A L J 725 47 All. 756: 1925 A I R 787 (Allahabad): 89 Ind Cas 122 Sec 7 has no application to an appeal against a decree in a suit on a mortgage in which no amount is claimed To such a case Sch I, Art 1 of the Court Fees Act applies, *Rama Krishna Reddi* v *Kolla Kota Reddi*, (1906) 30 Mad. 96.

Suits Valuation Act.—The provisions of section 8 of the Suits Valuation Act applies to suits as well as to appeals which arise out of these suits, *Bai Varunda Lakshmi* v *Bai Manegavri*, 18 Bom 207.

Scope.—Sch I, Art 1 of the Court Fees Act does not stand by itself but is a supplement to s. 7 and other sections of the Act. Sec 7 states the various processes by which the value in different suits is arrived at and the schedule then supplies the

proper court-fees to those values payable either upon the plaint or memorandum of appeal. The value of a particular relief, once correctly found for the purpose of stamping the plaint in a suit, remains unchanged in subsequent stages of the suit. The value of the particular appeal remains the same whether the appeal is preferred against its refusal or its grant, *Dhiraj Singh* v *Rajaram*, 6 N L R 164.

Computation of duty payable on probate or Letters of Administration.—We are bound to read the schedules together with the Act On a construction of the Court Fees Act, 1870, no duty is payable in respect of a grant of probate or letters of administration where the value of the estate, after making the deductions specified in annexure B of the third schedule, is less than Rs 1,000, *In the goods of Mrs Meik*, 40 All 279 (281).

Method of calculation—In determining the amount of court-fee payable, the sole question to be considered is what is the "subject-matter" of the suit In cases where the plaintiff is bound to ask for possession, *ad valorem* court-fees under section 7, paragraph 5 are to be paid, *Syed Mahamed Gouse* v. *Government*, 1925 M W N 252: 48 M L J 571· 88 Ind Cas. 209: 22 L W 163: 1925 A I R 804 (Mad)

Subject-matter.—The words "subject-matter in dispute" refer to matters in dispute in appeals and the provisions of section 7, paragraph (ix) applies to suits and not to appeals, *Reference under the Court Fees Act*, 29 Mad 367: 16 M L J. 287. See also *Krishnama Chariar* v *Srinivasa Ayyangar*, 4 Mad 339 (valuation of a charge)

Where the subject-matter of suit and the subject-matter of appeal are the same, the amount or value of subject-matter is nothing more than the value of the property which the plaintiff is seeking to recover or retain, *Sohan Lal* v *Sardar Khan*, 16 P.W.R. 1916: 25 P R 1916: 32 Ind Cas. 121

The term subject-matter is obviously not to be confined and applied only to what is capable of valuation in money. There are many suits which are incapable of such valuation, for example, suits for restitution of conjugal rights, suits for precedence in ceremonial worship, and so on The test simply is, what is the nature of the relief sought, *Vasireddi Veeramma* v. *Butchayya*, 50 Mad. 646 (649): 52 M.L J. 381· 25 L.W. 440: 101 I.C. 379: 1927 A.I.R. 563 (Mad.).

The amount or value of the subject-matter in dispute in a cross objection as to costs only, must be read as amount or value of the sum claimed as costs, *Ma Shin* v. *Maung Shwe Hnit*, 1925 A.I.R 145 (R.): 2 Ran 637: 3 Bur.L.J. 279: 85 Ind. Cas. 257.

The subject-matter in an appeal against a joint decree for *mesne profits* against several defendants is the whole of the decretal amount as the liability of the several defendants cannot be split up, *Dhanukdhari Prasad* v *Ramadhikari*, 12 Pat. 188: 13 P L T 810. 142 I C 617· 1933 A I R 81 (Pat.): 1933 I.R. 162 (Pat)

Ad valorem court-fee is payable on the amount for which the appellant sought to avoid liability, or on the amount by which he sought to enhance the value of his decree, on the principle that the case is governed by Art 1, Sch. I, Court Fees Act, which prescribes that a memorandum of appeal must bear a court-fee stamp calculated on the value of the subject-matter in dispute in appeal The rule applies to all appeals from decisions determining the amount of *mesne profits*, whether the profits may have accured before suit, or after the institution of the suit, *Sideshwari Prasad and others* v. *Ram Kumar Rai*, 12 Patna 694: 1933 A I R 234 (P.): 14 P.L T. 180 144 I C 684

But if the appeal embodies a prayer which cannot be valued then the appeal comes under Article 17, clause (vi), Shedule II of the Court Fees Act, and Rs 10 is payable, *Ram Jawaya* v. *Debi Ditta Mal*, 107 P W.R 1916: 117 P R. 1916: 34 Ind Cas. 192

Court-fees on appeal against part—It was not contemplated by the legislature that the court-fees payable on part of the whole claim in appeal, is in the absence of express direction to the contrary to exceed the court-fees payable on the whole claim, *Hazari Singh* v *Piran*, 92 P R 1900; *Harbhagwan* v. *Amar Singh*, 5 Lah 137 83 I C 332: 1924 A I.R. 530 (Lahore).

An appellant is entitled to pay diminished court-fee by attacking the whole of the decree, in an appeal from a decree in a pre-emption suit, while in reality the subject-matter of appeal is a part of the decree requiring increased court-fees, *Nazar Muhammad* v *Kala Ram*, 9 Lah. 563: 113 I C. 538.

A party can appeal from the whole decree when obviously his intention was to appeal against a part only, in order to avoid payment of a larger amount of court-fees, as the Court Fees Act does not prohibit it, *Harlal* v. *Siri Ram*, 32 P.L.R. 591: 131 I C 124 1931 A I R 633 (Lah.)· 1931 I.R. 892 (Lah).

Appeal as to a part—Cross objection not filed.—Where the plaintiff has obtained a decree for a portion of his claim and has appealed for relief in respect of the remainder, the defendant, who has not taken statutory steps to assail the decree in so far as it is adverse to him, should not be allowed to contend that not only the appeal by the plaintiff but the [illegible] suit should be dismissed, *Akimannessa* v *Bepin Behary*, 22 [illegible] 397 (399) 20 C W N 544: 32 Ind. Cas. 499.

Valuation of appeal.—The court-fee payable on an appeal, is to be calculated upon the valuation of the subject-matter of the suit arrived at by the lower Court, *Surendra Narain Sinha* v *Hafijur Rahman*, 30 Ind Cas 379

The value of an appeal is the value of the relief granted by the decree which a party wishes to get rid of, and in a claim for possession the value is to be determined under section 7, para (v) of the Court Fees Act *In re G B Seethayamma*, 42 Mad 652· 47 M L J 919: 21 L W. 15· 85 I C 405: 1925 A I R 323 (M) See also *In re Parkodi Achi*, 45 Mad. 246: 41 M.L J 587· 1921 M W N 854: 68 I C 444: 1922 A I R. 211 (M).

The proper method of determining court-fee payable on a memorandum of appeal is to find out the value of the relief granted which is sought to be got rid of, *Mithomal* v *Bashomal*, 116 I C 110 1929 A I R 161 (Sind)

The defendant appealing against the whole decree is bound by the valuation made in the plaint by the plaintiff, *Dhupati Srinivasa Charlu* v *A Periandevamma*, 39 Mad 725. 30 M L J. 402: 33 I C 602 F.B

In a suit against a *Matwalli* of a Mosque "the defendant may not have any personal interest at all and yet the subject matter of appeal may be as valuable as the subject-matter of suit" and the High Court ordered the defendant to stamp the memorandum of appeal with the same amount of court-fees as on the plaint, *Mohamed Masik* v *Malkai M Ugwa Budshah Mehala Shaheba*, 10 Cal 380

Valuation for suits and appeals is to be constant and the valuation of a particular relief in appeal remains unchanged whether the appeal be against the grant or refusal of the relief in the lower Court, *Dhiraj Singh* v *Rajaram* (1910) 6 N L R. 164: 8 I C 1125; *Shiwa Kunbi* v *Dashrath*, 147 I C 1113

The appellant appealing against a decree in a suit for recovery of possession and for antecedent *mesne profits*, is bound to value the appeal at the same amount at which the subject-matter was valued by the plaintiff in the first Court, *Deonandan Misra* v. *Ganga Prasad and others*, 8 Patna 906: 10 P.L T. 622: 120 I.C. 313: 1929 A.I.R. 731 (Patna).

The defendant appealing against a decree in a suit for money to be determined on examination of accounts, is to pay *ad valorem* court-fees on the valuation made in the plaint The defendant appellant cannot evade payment by pleading that he only wants a declaration in the appeal stage, *Pochalal Ranchhod and other* v. *Umedram Kalidas and another*, 52 Bom 904: 30 Bom L R. 1284: 115 I C. 391: 1928 A I.R 476 (Bom), dissented

from in *Vershi Kanji* v *Kaku Kanji*, 37 Bom.L R. 148: 1935 A.I R 212 (Bom), on the question of valuation only.

The appeal is to be valued on the same principle as the plaint was valued, *Abdul Rahman* v. *A B Crisp*, 126 I.C. 645: 1930 A I R 164 (Ran.): 1930 I R. 325 (Ran.).

The defendant in appealing against a decree which found the liability to exist as also in a case where the liability is denied for a portion of the claim, must accept the valuation of the plaintiff and pay court-fees accordingly. *Phulartand Coal Co* v. *Burrakar Coal Co*, 11 P L T 629 128 I C 795: 1930 A I R 605 (P): 1931 I R 59 (P) See also *Batna Ram* v. *Rahmatullah*, 32 P L R 62: 131 I C 337: 1931 A I R. 143 (Lah). See also *Faizullah Khan* v *Mauladad Khan*, (1929) 56 I.A 232: 10 Lah 737 31 Bom L R 841: 33 C W N 781: 50 C L.J. 39: 57 M L J 281 30 L W 104 1929 M.W.N 818 117 I.C. 493: 1929 A I R 147 (P C) where the Judicial Committee in a case of accounts considered that the payment of court-fees only on the amount found due to the defendant in the final decree, may not only be full (i e, involving the claim of the plaintiff and the amount found due to the defendant) but also largely in excess

Reduction of claim and value.—The appellant cannot reduce the value of the suit for the first time in appeal to escape the payment of court-fees, *Harbans Sahu* v *Lalmoni Kuer*, 62 Ind Cas 36 1922 A I R 62 (Patna). The defendant in his appeal should not depart from the original valuation by the plaintiff when the subject-matter continues to be identical, *Samiya Mavali* v *Minammal*, 23 Mad. 490: 10 M L.T 240.

But in *Chuni Lal* v *Sheo Charan Lal Lalman*, 23 A.L.J 725 47 All 756 89 I C 122: 1925 A.I.R. 787 (A.), the Allahabad High Court allowed the defendant appellant to put in a reduced valuation on the memorandum of appeal in a suit for dissolution of partnership when the lower appellate Court decided against the defendants and directed accounts to be taken. The High Court held, that "in cases where the valuation has of necessity to be arbitrary and tentative, the person who has to present a petition or plaint or appeal and who is called upon to pay the necessary court-fee will have to fix the valuation and unless the Court is of opinion that the valuation has been put down fraudulently, it will be difficult not to accept the valuation so made "

A defendant appellant, if he has paid sufficient court-fees, is not bound by the incorrect statement of value by the plaintiff in the trial Court He may be allowed to correct the valuation. *Bhagwan Puri* v *The Secretary of State for India in Council*, 49 All 398. 25 All L J. 258: 100 I.C 35: 1927 A I R 308 (Allahabad)

Valuation of appeal.—The court-fee payable on an appeal, is to be calculated upon the valuation of the subject-matter of the suit arrived at by the lower Court, *Surendra Narain Sinha* v *Hafijur Rahman*, 30 Ind Cas 379.

The value of an appeal is the value of the relief granted by the decree which a party wishes to get rid of; and in a claim for possession the value is to be determined under section 7, para (v) of the Court Fees Act. *In re G B. Seethayamma*, 42 Mad 652: 47 M.L J. 919: 21 L W 15: 85 I.C. 405: 1925 A.I.R. 323 (M.). See also *In re Parkodi Achi*, 45 Mad. 246: 41 M L J. 587: 1921 M.W.N. 854: 68 I C. 444: 1922 A I.R. 211 (M.).

The proper method of determining court-fee payable on a memorandum of appeal is to find out the value of the relief granted which is sought to be got rid of, *Mithomal* v *Bashomal*, 116 I C 110: 1929 A.I.R 161 (Sind).

The defendant appealing against the whole decree is bound by the valuation made in the plaint by the plaintiff, *Dhupati Srinivasa Charlu* v *A Periandevamma*, 39 Mad. 725: 30 M.L J. 402: 33 I C. 602 F B

In a suit against a *Matwalli* of a Mosque "the defendant may not have any personal interest at all and yet the subject matter of appeal may be as valuable as the subject-matter of suit" and the High Court ordered the defendant to stamp the memorandum of appeal with the same amount of court-fees as on the plaint, *Mohamed Masik* v. *Malkai M. Ugwa Budshah Mehala Shaheba*, 10 Cal. 380

Valuation for suits and appeals is to be constant and the valuation of a particular relief in appeal remains unchanged whether the appeal be against the grant or refusal of the relief in the lower Court, *Dhiraj Singh* v *Rajaram* (1910) 6 N.L.R. 164: 8 I.C. 1125; *Shiwa Kunbi* v *Dashrath*, 147 I C. 1113

The appellant appealing against a decree in a suit for recovery of possession and for antecedent *mesne profits*, is bound to value the appeal at the same amount at which the subject-matter was valued by the plaintiff in the first Court, *Deonandan Misra* v. *Ganga Prasad and others*, 8 Patna 906: 10 P.L.T. 622: 120 I.C. 313: 1929 A I.R. 731 (Patna).

The defendant appealing against a decree in a suit for money to be determined on examination of accounts, is to pay *ad valorem* court-fees on the valuation made in the plaint. The defendant appellant cannot evade payment by pleading that he only wants a declaration in the appeal stage, *Pochalal Ranchhod and other* v *Umedram Kalidas and another*, 52 Bom 904: 30 Bom L R. 1284: 115 I.C 391: 1928 A I.R. 476 (Bom), dissented

from in *Vershi Kanji* v. *Kaku Kanji*, 37 Bom.L R 148: 1935 A I R, 212 (Bom), on the question of valuation only.

The appeal is to be valued on the same principle as the plaint was valued, *Abdul Rahman* v. *A B Crisp*, 126 I.C. 645: 1930 A I R 164 (Ran): 1930 I R. 325 (Ran.)

The defendant in appealing against a decree which found the liability to exist as also in a case where the liability is denied for a portion of the claim, must accept the valuation of the plaintiff and pay court-fees accordingly, *Phulartand Coal Co* v. *Burrakar Coal Co*, 11 P L T. 629. 128 I C 795: 1930 A I R 605 (P): 1931 I R 59 (P) See also *Batna Ram* v *Rahmatullah*, 32 P L R 62: 131 I C 337: 1931 A I R 143 (Lah) See also *Faizullah Khan* v *Mauladad Khan*, (1929) 56 I A 232 10 Lah 737: 31 Bom L R 841 33 C W N 781 50 C L J 39. 57 M L J 281 · 30 L W 104 1929 M W N 818 117 I C 493: 1929 A I R 147 (P C) where the Judicial Committee in a case of accounts considered that the payment of court-fees only on the amount found due to the defendant in the final decree, may not only be full (*i e*, involving the claim of the plaintiff and the amount found due to the defendant) but also largely in excess

Reduction of claim and value.—The appellant cannot reduce the value of the suit for the first time in appeal to escape the payment of court-fees, *Harbans Sahu* v *Lalmoni Kuer*, 62 Ind Cas 36. 1922 A I R 62 (Patna) The defendant in his appeal should not depart from the original valuation by the plaintiff when the subject-matter continues to be identical, *Samiya Mavali* v *Minammal*, 23 Mad 490 10 M L T 240

But in *Chuni Lal* v *Sheo Charan Lal Lalman*, 23 A L J 725. 47 All 756 89 I C 122 1925 A I R 787 (A), the Allahabad High Court allowed the defendant appellant to put in a reduced valuation on the memorandum of appeal in a suit for dissolution of partnership when the lower appellate Court decided against the defendants and directed accounts to be taken The High Court held, that "in cases where the valuation has of necessity to be arbitrary and tentative, the person who has to present a petition or plaint or appeal and who is called upon to pay the necessary court-fee will have to fix the valuation and unless the Court is of opinion that the valuation has been put down fraudulently, it will be difficult not to accept the valuation so made"

A defendant appellant, if he has paid sufficient court-fees is not bound by the incorrect statement of value by th plaintiff in the trial Court He may be allowed to corre the valuation, *Bhagwan Puri* v *The Secretary of State for In in Council*, 49 All 398 25 All L.J 258 100 I C 35: 1 A I R 308 (Allahabad)

There is nothing to debar the appellant from relinquishing a part of his claim and to claim the rest paying proper court-fee stamp on the memorandum of appeal on the claim as reduced in appeal, *Karam Chand* v. *The Jullunder Bank Ltd., in linquidation,* etc., 102 I.C 705: 1927 A I R. 543 (Lah): 29 Punj.L.R. 64.

The valuation of a suit under the former Court Fees Act may be altered in appeal under the provisions of the existing Court Fees Act which repealed the former Act, *Mt Bhugabutty Koer* v *Mt Kustoori Koer,* 15 W R 272

The plaintiff or an appellant may reduce his claim and thereby reduce the amount of court-fees payable provided under the circumstances of the case such a course is permissible. The result will be that in so far as he submits to the decree appealed against the decree becomes final and court-fee need only to be paid on the remainder, *i e*, the disputed amount, *Ramchand* v *Panna Lal,* 27 A L J 547 1929 A I R. 308 (All) · 116 I.C 82

A pauper appellant may reduce his claim after rejection of his application to sue *forma pauperis,* and pay court-fees on the diminished valuation No question of *mala fides* arises in such a case, *Rajendra Prosad Bose* v *Gopal Prosad Sen,* 9 Pat L T 613

A Court can allow a plaintiff-appellant to give unnecessary reliefs and limit his claim, *In re Nanda Lal Mookherjee,* 35 C W N 942; *Jai Dayal* v *Narain Das,* 32 P L R 854 In *Amir Shah* v *Syed Shah Mahomed,* 32 P L R 129, 131 I.C. 297: 1931 A I R 237 (Lah): 1931 I R 425 (Lah) the Lahore High Court allowed the plaintiff in a pre-emption appeal to reduce the valuation and held that the District Court should have decreed the appeal for the portion within the amount of court-fees paid

Rejection of plaint or memorandum of appeal.—An appeal from an order rejecting a plaint for non-compliance with an order to pay additional court-fees is capable of valuation and the subject-matter is the same as in the original suit and the same court-fee is payable on the memorandum of appeal as on the plaint, *Ganpati* v *Venkatesh and others,* 1935 A I R. 83 (Nag). F.B.

Decree for a higher amount.—*Insufficient court-fee*—An appellant Court cannot pass a decree for a larger amount than that claimed in the memorandum of appeal, unless before the judgment is pronounced, an amendment of the memorandum of appeal is allowed and additional court-fees put in. *Percival* v *Collector of Chittagong,* 30 Cal 576 In *Ram Doolal* v *Gopal Kristo,* 16 W.R 156, the Calcutta High Court refused to pass a full decree because full court-fees were not paid but passed a simple declaratory decree.

Where an appeal for recovery of money and interest thereon due on *bahi accounts*, is not properly stamped, the appeal cannot be dismissed in toto but a decree for a larger amount in excess of the sum for which court-fees have been paid cannot be passed *Firm Nihal Chand Atma Ram* v. *Sardari Mal*, 96 I C 136 1926 A I R 558 (Lah)

A memorandum of appeal was properly stamped when presented and a judgment was passed in the appeal. It was then found that the appellant is entitled to a larger amount than that on which he has paid court-fees, *held* that there is no provision in the Court Fees Act under which the appellant may be called upon to pay additional court-fees upon the amount found due under the directions contained in the judgment of the High Court The judgment having been passed the office cannot refuse to draw up the decree in terms of the judgment without payment of any additional court-fee, *Debi Lal Sahu* v *Gossain Koleshar Gir and others*, 8 P L T 331: 105 I C 395: 1928 A I R 58 (Pat)

Change of character of suit in appeal—A suit for partition was instituted on a plaint bearing a ten rupee court-fee The trial Court in deciding the issue as to court-fees and possession several months before the trial of the suit commenced decided that *ad valorem* court-fees are payable, upon which the plaintiff paid *ad valorem* court-fees but did not amend the plaint. At the hearing of the suit the defendants objected that the trial cannot commence on the plaint as it is drawn up An application was filed to amend the plaint which did not contain all the necessary elements to convert the suit into a suit for recovery of possession. The trial Court dismissed the suit. The order was upheld by the High Court, *Rebati Ramon Basak and others* v. *Harish Chandra Basak and others*, 24 C.W N 749: 58 I.C 665 See also *Haladhar Pal Chowdhury* v *Sheikh Mangal Reza*, 34 C W N 217 126 I C 777 1930 A I R 793 (Cal) where in a suit for possession by tenants, the landlord was held to be appealing as if it was a declaratory suit.

The defendant appellant cannot evade payment of court-fees in an appeal from a decree in an accont suit by pleading that he only requires a declaration at the appeal stage, *Pochalal Ranchhod* v *Umedram Kalidas*, 52 Bom 904: 30 Bom L.R. 1284: 115 I C 391· 1928 A I R 476 (Bom.).

Proper appeal Court.—In order to determine the proper appellate Court what has to be looked is the value of the original suit, *i e*, the amount or value of the subject-matter of the suit. The word "value" must be taken to be the value assigned by the plaintiff in his plaint and not the value as found by the C unless it appears that either purposely or through gross neglig

the true value has been altogether misrepresented by the plaintiff, *Muhammad Abdul Majid v Ala Bux alias Allan*, 47 All 534: 23 A L J 216, 86 I C 1055: 1925 A I R 376 (All) See also *Chuni Lal v. Tricamdas Ramdas*, 1926 A I R 81 (Nag.): 89 I C 407

The plaintiff in a suit for accounts approximately valued the relief for accounts at Rs 1,100, but on accounts being taken the amount was found to be over Rs 1,100, held that the amount found by the trial Court to be due to the plaintiff and not the amount at which the plaintiff approximately valued the suit, was the criterion for determining the forum of the appeal, *Budho Mal v Rallia Ram and others*, 9 Lahore 23 9 L W.N. 1: 29 P L R. 320: 110 I C 631 1928 A I R 157 (L)

Account suit.—*Appeal valuation*—When the defendant appeals from the whole decree in a suit for accounts, he is found by the valuation by the plaintiff in the plaint, *Damodara Padhano v Haribandhu Patnaick*, 1921 M W N 558 70 Ind. Cas 392 14 L W 389

The defendant-appellant in an appeal arising out of a preliminary decree in a suit for accounts can put his own valuation on the memorandum and need not accept the valuation made in the plaint by the plaintiff (In this case the defendant-appellant did not question the liability but objetced as to the period for which he is liable), *Kanhaiya Lal v Seth Ram Sarup*, 44 All 542: 20 A L J 416 (1922) A I R 228 (All), *approving Bholanath v Parsottam Das*, 32 All 517: 7 A L J 546 6 I C. 832, *Thakur Das v Daulat Ram*, 1926 A I.R 189 (Lahore): 91 I C 32 26 P L R 825

Where the plaintiff in an account suit valued the relief prayed for at a certain amount and obtained a preliminary decree for accounts and the defendant thereupon filed an appeal against the whole decree, he is bound by the valuation made in the plaint, *Dhupati Srinivasa Charlu v. A Perindevamma*, 39 Mad 725: 30 M L J 402: 33 Ind. Cas. 602 F B.

The approximate valuation by the plaintiff in a suit for accounts must be adhered to in an appeal from the preliminary decree, unless the subject-matter of appeal is not identical with that of the suit, and in the latter class of cases the appellant can value the subject-matter of appeal in a different way and pay court-fees on that basis, *Mahomed Rahmoo Mowji v. Ibrahim Gangaji*, 21 S.L R. 377: 98 I C. 909: 1927 A I R. 100 (Sind); *Shivandas Matumal v. Hariman*, 27 S L R 335: 147 I.C. 251: 1933 A I R 332 (Sind).

Appeal—valuation—The defendant appealing against the final decree in a suit for accounts, is to value the appeal at the entire amount decreed against him and cannot put an arbitrary

value, *Sharfuddin* v *M Khadim Ali*, 1934 A L J 643: 150 I.C. 1090: 1934 A I R 807 (All): 4 A.W.R 263; *Kailash Chandra* v *Narayan Chandra*, 59 C L.J 447: 152 I C 97: 1934 A.I R. 786(Cal).

The defendant in appealing against a decree in a suit for accounts, is not bound by the valuation by the plaintiff and may put his own valuation on the memorandum of appeal, *C K Ummar* v *Ali Ummar*, 9 Ran 165: 133 I C 91 1931 A I R 146 (Rang): 1931 I R 235 (Rang) F B

The defendant in appealing against a decree for rendition of accounts is bound by the valuation by the plaintiff and therefore must pay court-fees accordingly, *Batua Ram* v *Rahmatullah*, 32 P L R 62 131 I C 337 (1) 1931 A I R 143 (Lah) See *cases noted under section 7, paragraph* (*iv*) (*f*), supra

Dissolution of partnership—In a suit for dissolution of partnership, the defendant appealed against the preliminary decree, pleading that they had no interest in the partnership, and that they sought only a declaration to that effect, held that appellants ought to pay an *ad valorem* court-fee according to the amount at which the relief was valued.

Mr Justice Tudball said at page 522 of the report "The fact that it is now compulsory on the appellant to appeal against the preliminary decree passed in such suits, does not affect the matter of court-fees in any way Section 7 of the Court Fees Act distinctly lays down that the amount of court-fees payable shall be computed in suits for accounts according to the amount at which the relief sought is valued in the plaint or the memorandum of appeal The language of the section seems to be quite plain whether the appeal be from a preliminary or a final decree It seems to me to be impossible to hold otherwise than that an *ad valorem* court-fee should be paid according to the amount at which the relief sought is valued in the memorandum of appeal," *In the matter of Bholanath* v *Parsottam Das*, 32 All 517 7 All L J 546 6 Ind Cas 832

In an appeal from a preliminary decree in a suit for dissolution of partnership and taking of accounts, the memorandum of appeal should bear *ad valorem* court-fees on the valuation of the relief claimed in the plaint A ten rupee court-fee is insufficient, *Kanji Mal* v *Panna Lal*, 15 P L R 1916 7 P R 1915 28 Ind Cas 262

But see *Chunni Lal* v *Sheo Charan Lal Lalman*, 23 A L J. 725, 47 All 756 1925 A I R 787 (All) 89 Ind Cas 122, *supra*

A suit between partners for rendition of accounts was approximately valued at Rs 3,000 The defendant claimed Rs 29,000 The trial Court dismissed the suit but decreed the claim of the defendant to the extent of Rs 29,000. The

appeal against the decree was valued at Rs 19,000 but court-fees on the entire sum including Rs 3,000 was paid. Before the Judicial Commissioner it was argued that the item of Rs 3,000 had gone and must be dismissed as a nullity. The Judicial Committee did not accept the view and pointed out that direction should have been given to lodge the extra amount if required or the question of the amount of court-fees should have deferred until final value was determined, *Faizullah Khan* v *Mauladad Khan and others*, L R 56 I A. 232: 10 Lah. 737. 31 Bom L R 841 · 33 C W N 781 50 C L J 39. 57 M.L.J 281 30 L W 104: 1929 M W N 818 · 117 I C 493: 1929 A I R 147 (P.C.).

The defendant appellant in an appeal from a decree against him in a suit for accounts of a partnership business, can put a notional valuation on the subject-matter of the appeal, but if the appellate Court after hearing and consideration of the appeal comes to the conclusion in favour of the appellant in respect of a far larger amount than that he has paid court-fees for, the proper thing would be to post the case for orders and direct the appellant to pay additional court-fees and only then should the judgment be delivered and the decree should be allowed to be drawn up *In re Nukala Venkatanandan and others*, 141 I C 602 · 1933 A I R 330 (Mad)

It is open to the appellants in an appeal from a preliminary decree in a partnership suit to fix their own valuation provisionally for the purpose of court-fees, *Binjraj and another* v. *Kisanlal and another*, 1933 A I R 127 (Nag) 29 N L R 34

Winding up partnership—A memorandum of appeal against a preliminary decree for winding up partnership business, need only to be stamped with a court-fee of Rs. Ten, the other questions relating to allowing or disallowing certain items being incidental, *Ram Singh* v *Ram Chand*, 6 P W R. 1920: 1 Lah. 6. 9 P L R 1920: 57 I C 185

Execution against an alleged partner—An appeal against an order refusing execution against an alleged partner of a firm is an appeal from a decree [Order 21, Rule 50 (2)] and should be stamped with court-fees calculated *ad valorem* on the claim, there being no notification under section 35 reducing the court-fees, *Valliappa Chetty* v *Rangaswamy Naicker*, 8 L B R 300: 35 Ind. Cas 429 See also other cases under section 7 (iv) (f) *supra* and under the heading 'Civil Procedure Code' *infra*

Award.—*Application to file an Award*—See sections 89 and 104, C P. C. (V of 1908) and Schedule II of that Act.

Where an award was made on a reference to arbitration without the intervention of Court and a decree was made that

the plaintiff is entitled to a certain sum as awarded by the arbitration; held, that the order directing such an award to be filed has the force of a decree and consequently the memnraodum of appeal ought to bear *ad valorem* court-fees calculated on the amount decreed as provided by Schedule I, Art 1 of the Court Fees Act, *Hari Mohan Singh* v *Kali Prosad Chaliha*, 33 Cal. 11, followed in *Maganlal Gopaldas* v *Lalchand Hirachand*, 9 Bom L R 259, *Khulam Khan* v. *Muhammad Hassan*, 29 Cal 167 P C ; *Wolee Alum* v *Bibee Misrun*, 3 B L R Ap 104· 12 W R 50, *Daya Nand* v *Bhaktawar Singh*, 5 All 333: 3 All W.N 56, *Janki Tewari* v *Gagan Tewari*, 3 All 427 But see *Lurkhur Choubey* v *Ram Bhajan Choubey*, (1903) 23 All W N 214, *Bhagat Ram* v *Paras Ram*, 84 P R 1907 184 P L R 1908 [In both these cases it was held that ten rupees court-fee is payable under Art 17, clause (iv) of the second Schedule of the Court Fees Act and not *ad valorem*]

Court-fees payable on a memorandum of appeal against a decree passed on reference to arbitration under Schedule II, para 16, C P C are *ad valorem* on the value of the appeal, *Gouri Shanker* v *Ananta Ram*, 1926 A I R 403 (Lah). 94 I C 646

The present Code of Civil Procedure by enacting s 104 provides for an appeal from an order allowing an award made on a reference without the intervention of Court as an appeal from an order Therefore the court-fees are to be paid under Art 11, Sch II of the Court Fees Act, *Ram Autar* v *Ram Samujh*, (1931) 6 Luck 703

An application to the 1st Court.—An application to the 1st Court to file an award is liable to be stamped with an 8 annas court-fee as on an application, *Lala Dharam Das* v *Ajudhia Pershad*, 70 P R 1881

An appeal against the decree of the trial Court over-ruling the plea of the defendant that other members of the family are also interested, requires a court-fee of rupees ten on the memorandum of appeal under Art 17, (vi), Schedule II of the Court Fees Act, *Kripal Singh* v *Sant Singh*, 71 P.R 1911 13 Ind. Cas 305

Civil Procedure Code.—*Order 21, rule 50*.—The memorandum of an appeal from an order under the provisions of Or 21, Rule 50 (2) or (3), is to be stamped with *ad valorem* court-fees on the amount sought to be recovered as that order is a decree under the Code of Civil Procedure, *Jugal Kishore Gulabsingh* v *Dinanath Sri Ram*, 126 I.C. 562: 1930 A I.R. 825 (Lah): 1930 I R 754 (Lah.); on appeal in 1934 A.I.R 958 (Lah): 35 P L R 565: 15 Lah. 893; *Bhutnath Ta and others*

v. *Barindra Nath Bhattacharya*, 37 C.W.N. 227: 60 Cal 530: 146 I C 123: 1933 A.I.R. 546 (Cal): 6 I.R. 178 (Cal); *Sital Prasad* v. *Messrs Clement Robson and Company*, (1921) 43 All. 394 (397); *Punjab National Bank Ltd.* v. *Ranchoredas Gordhandas and others*, 25 S.L.R. 25: 127 I.C. 704: 1930 A.I R 255 (Sind): 1930 I.R 320 (Sind); *Valliappa Chetty* v. *Rangaswamy Naicker*, 8 L B.R. 300: 35 I C 429

Order 21, rule 95—An order made on an application under Ord. 21, Rule 95 comes under s. 47 of the Code of Civil Procedure if the decree-holder is the auction-purchaser, *Kailash Chandra Tarafdar* v. *Gopal Chandra Paddar*, 53 Cal. 781: 30 C.W.N 649: 43 C.L J 345: 95 I C. 494: 1926 A.I.R. 798 (Cal) F.B.

Where a person obstructed the execution of a decree and a decree was passed against him under section 330 (Or. 21, Rule 98), C P. C, in an appeal by him the memorandum must be stamped with an *ad valorem* duty, *Balasundra Mudelly* v. *Raja Lingam Chettier*, 29 Mad. 172. (In this case the proceeding was registered as a suit).

Section 331—Memorandum of appeal from decisions passed under section 331 (Order 21, Rule 99), C. P. C are chargeable with full court-fees stamp as in the case of appeals from decrees, *Mahbuban* v *Umrao Begum*, 8 Cal 720: 11 C L R. 98

Order 21, Rule 103—In *Shiva Kunbi* v. *Dashrath*, 1933 A.I R. 362 (Nag.), the Nagpore Court held that a suit under Or. 21, Rule 103, the proper court-fee is Rs. 10, under Sch. II, Art. 17, cl. (i) of the Court Fees Act, but the defendant appellant was ordered to pay higher court-fees as the plaintiff had to pay higher court-fees at his instance

Order 41, Rule 33—The powers conferred on Court by Order 41, Rule 33 should be cautiously exercised and should not be permitted to be invoked in favour of a litigant so as to enable him to evade the provisions of other statutes, *e g*, the Limitation Act and the Court Fees Act, *Akimannessa* v *Bepin Behary*, 22 C L J 399: 20 C.W N. 544: 32 I.C. 499; *Abjal Majhe and others* v. *Intu Bepari and others*, 22 C L J. 394: 20 C.W.N 542 See also *Rangam Lal* v *Jhandu*, 34 All 32 F.B.

But the above cases were doubted in *Bhutnath Deb* v *Sashimukhi Brahmani*, 30 C W N 885 (888): 45 C L J. 119 (123)

Section 332B, C P C.—See 3rd Schedule to the Code of Civil Procedure (Act V of 1908).

Under paragraph 6 of that schedule the appeals from decisions regarding the extent of liability of a judgment-debtor to a claim preferred against him, must be stamped with *ad valorem*

court-fees as an appeal from a decree, *Ahmadkhan* v. *Madho Das*, 7 All 565: (1885) 4 All. W N 99 See contra, *Srinivasa* v *Peria Tamb*, 4 Mad 420

Condition.—Appeal against (see under heading 'Decree with a Condition' *infra*)

Cost.—Court-fees are not payable on costs as costs are not subject-matters of suit, *Doorga Das Chowdhury* v *Romanath Choudhury*, 8 M I A 262, *i e*, it being in the discretion of the Court to grant or not to grant it, *Nilmadhav Das* v *Bishumbhar Das*, 13 M I A 85 (103): 3 B L R. 27 P C A party appealing from a decree disposing of the whole claim need not pay court-fees on the costs awarded in the decree, *Beni Prasad* v *Raja Ram*, 37 P L R 50 1935 A I R 379 (Lah) But if relief as to costs form a distinct and independent ground in the memorandum the court-fee *ad valorem* on costs is payable on the value of such distinct relief, *In re Makki*, 19 Mad 350 4 M L J 148, *Kewal Singh* v *Makrand Singh*, 12 O C 171 3 I C 584 Where an appeal as to costs is distinct and separate from other parts of the appeal, court-fees must be paid *ad valorem* on the costs in dispute, *T K Rawlins* v *Lachmi Narain*, 3 Pat L J 443 (1918) Pat C W N 264 · 44 Ind Cas 50 4 Pat L W 221, *Debendra Mohan Rai* v *Sona Kuar*, 21 All W N 21, *Krishnaji* v *Babaji*, 1891, P J 52; *Vahiram and another* v *Karachi Bank and others*, 23 S L R 277 104 I C 391 · 1927 A I R 251 (S), *Fateh Singh* v *Manj Rai*, 1934 A I R 739 (Lah) 35 P L R 656

The defendants seeking to recover costs disallowed to them by the trial Court are bound to pay court-fees according to the amount under Sch I, Art 1 of the Court Fees Act as costs are subject-matter in dispute between the parties, *Kamakhya Narain Singh* v *Ramraj Singh and others*, 8 Patna 543 1929 A I R 286 (Patna) 117 I C 166

Appeal as to costs out of a suit for partition —The memorandum of an appeal against costs only in a suit for partition need only bear a court fee under Art 17 (vi) of the second Schedule of the Court Fees Act, *Raja Jyoti Prosad Singh Deo* v *Jogendra Ram Ray*, 56 Cal 188 32 C W N 1105 116 I C 383 1928 A I R 878 (Cal)

Cross objection as to costs —There is apparently no provision made in the Court Fees Act 1870, for the case of a petition of objection by the respondent under section 561 (Order 41, Rule 22) of the Code of Civil Procedure where such objection relates to costs only and the appellant appeals against the whole decree, *Hasan Bano* v *Nizabuddin*, (1893) 13 All W N 55. A memorandum of cross objection filed in the High Court relating to costs only does not fall either under Art 11 of Schedule II of

the Court Fees Act or Art. 1, Schedule I of the same Act but is to be treated as a petition and comes under clause (d) of Article 1 of Schedule II of the Court Fees Act and a court-fee of rupees two is payable thereon, *Kamal Kamini Debi* v. *Rangpore North Bengal Bank, Ltd*, 25 C.W.N. 934. 64 Ind. Cas. 606

Contra—A memorandum of cross objection as to costs only must be stamped *ad valorem* for the amount of costs claimed, *Ma Shin* v *Maung Shwe Hnit*, 2 Ran 637 · 3 Bur L J 279: 1925 A I R. 145 (R) : 85 I C. 257 See also *Sharoda Soondurce* v *Govind Monee*, 24 W R 179, *Babaji Hari* v. *Raja Ram*, 4 Bom. 75.

The provisions of Art 1 of Schedule I of the Court Fees Act govern a memorandum of cross objection relating to costs, *Nihal Chand* v *Amar Nath*, 8 L L J 434 · 98 I C 272: 1926 A.I.R. 645 (Lah.) ; see other cases under costs, *supra*

A memorandum of cross objection as to costs is to bear *ad valorem* court-fees, *Chiranji Lal* v *Balchand*, 53 All. 1020: 1930 A.L J 1907: 128 I.C 780 1930 A I R 832 (All) : 1931 I R 108 (All)

Cross objection.—Section 16 of the Court Fees Act having been repealed by Sch V of the Code of Civil Procedure (Act V of 1908) the court-fees necessary must be paid at the time of filing the cross objection

To be stamped in the same way as an appeal—Cross objection must be stamped as a memorandum of appeal, *Sayad Amir Saheb* v. *Sheikh Masleudin*, 40 Bom 541 (Suit under section 92, C P C)

The memorandum of cross objection stands in the same position, for some purposes at least, as a memorandum of appeal under Art 1, Schedule I of the Court Fees Act as amended by Act V of 1908, and the court-fees must be paid in the same manner as on a memorandum of appeal Although the appellant may have paid more than adequate court-fees on the memorandum of appeal, it is incumbent on the respondent to value the memorandum of cross-objection, *Secretary of State for India* v. *Digambar Nanda*, 27 C.L.J. 443: 45 Ind. Cas 939 Under Sch I, Art. 1 of the Court Fees Act, 1870, a cross-objection must bear *ad valorem* court-fees on the value of the subject-matter, *Daroga Rout* v. *Musst Parema Kuar*, 3 Pat L J. 197: 4 Pat. L W. 38: 45 I C 508; *Syed Wasi Ali* v *Jung Bahadur Singh*, 18 O C 121.

A cross objection must bear court-fees calculated on the value of the subject-matter in dispute, but where the value is not capable of being estimated in money, the valuation placed

on the cross objection by the party presenting the same must be accepted, if such valuation is not unreasonable, *Sri Rajeo Lochan Maharaj* v. *Mahant Ram Manohar Prosad*, 25 O.C. 275: 70 Ind. Cas 286: 1923 A.I.R. 44 (Oudh)

A memorandum of cross objection should bear *ad valorem* court-fees and not as under Schedule II, Art. 17 of the Court Fees Act as the word 'cross objection' occurs in Sch. I, Art 1 and not in Sch. II, Art 17 of the Court Fees Act, *Harnoun Singh* v *Bahu Ram*, 10 O W N 1202: 1933 A.I.R 528 (Oudh): 147 I.C 186

In *Balak Ram High School, Panipat* v *Nannu Lal*, (1930) 11 Lahore 503. 31 P L R 509: 128 I C 532 1930 A I R 579 (Lah)· 1931 I.R. 68 (Lah) it was held that the direction by the trial Court that if the sum of Rs. 50,000 lying in deposit with a firm could not be realised then it should be realised from the estate of the testator in the hands of the plaintiff, does not create a definite charge on the estate, therefore a cross objection relating to this order falls within Sch II, Art 17 (vi) of the Court Fees Act and may be stamped accordingly.

A cross objection in a declaratory suit where no other relief is asked for does not require *ad valorem* court-fees, but is sufficiently stamped on court-fee as prescribed under Art 17 (iii), Sch II of the Court Fees Act as the omission of the word 'cross objection from that Article is a mere clerical error, *Surendra Singh* v. *Gambir Singh*, 1934 A L J 743. 3 A W R 803· 152 I C 196. 1934 A I R 728 (All)

Cross objection as to removal of a condition—A cross objection filed objecting to a condition precedent imposed by the decree, is to bear *ad valorem* court-fees, on the amount ordered to be paid, *Ishdat Tewari* v *Tameshwar Tiwari*, 45 All 537· 1924 A I R 175 (All)· 83 I C. 780

Cross objection in appeals arising out of mortgage suits—If the object in filing a cross objection be to set aside a mortgage then the memorandum is to be stamped with court-fees *ad valorem* on the value of the mortgage, *Sat Deo Narain* v. *Ramayan*, 52 Ind Cas 1002 If the object of filing the cross objection be to set aside the decree of the lower Court exempting certain mortgaged properties from sale, the memorandum of cross objection is to be stamped with a court-fee calculated *ad valorem* on the value of the property and not on the mortgage amount decreed, *Kachera* v *Kharag Singh*, 33 All 20: 7 All. L J 842 7 Ind Cas 315, *Kesavarappu* v *Kotta Kota*, 30 Mad 96. 16 M L J 458 F B followed

Cross objection in redemption suits—Cross objection in appeals arising out of redemption suits must be stamped *ad valorem* on the amount by which the decretal amount is sought

to be reduced, *Mansa Ram* v. *Umra*, 213 P.L.R. 1911: 134 P.W.R. 1911: 11 Ind Cas. 198; *Harihar Baksh Singh* v. *Lachhman Singh*, 11 O.W.N. 559: 1934 A.I.R. 246 (Oudh).

Cross objection in appeals arising out of partition suits—Under Article 1, Schedule I of the Court Fees Act, 1870, a party filing cross objections must pay *ad valorem* court-fees according to the value or amount of the subject-matter in dispute in a partition suit The High Court said that this is a hardship which can be remedied only by legislature and not by the High Court, *Lakhan Singh* v. *Ram Kishen Das*, 40 All. 93: 15 All. L.J. 886: 43 Ind Cas. 179.

[But according to the Calcutta High Court the value of partition suit is the value of the entire property sought to be partitioned and ten rupees are paid as stamp as the subject-matter is incapable of valuation; it does not appear how it is capable of valuation when a cross objection is filed The above ruling, therefore, cannot apply to Calcutta High Court]

Cross objection as to possession—A memorandum of cross objection claiming possession of property should be stamped *ad valorem* on the value of the property and is not to be stamped according to section 7, para v, *Bishen Sahai* v. *Chhotey Lal*, 1925 A.I.R. 119 (All.): 85 I C 270: 22 All L.J. 911: 47 All. 89.

Note.—The notifications of the Government of India reducing fees would also apply to cross objections unless those notifications specially mention plaints or memoranda of appeal

Deficiency of court-fees in cross objection filed in the lower Court—The High Court has an inherent power to realise deficiency of court-fees in cross objection filed by respondent in the lower appellate Court, on appeal preferred by one of the defendants only, even if the appellant to the High Court may not object to that part of the decree of the lower appellate Court which disallowed his cross objection although the Court had not before it the whole of the subject-matter of the suit, *Rasik Behary Pal Chowdhury* v. *Hriday Narain*, (1922) Pat. C.W.N. 162: I.L.R. 1 Patna 471: 66 Ind. Cas 769.

Note.—The memorandum of cross objection would be a document within the meaning of sections 4, 6 and 28 of the Court Fees Act, and therefore section 28 of the Court Fees Act would be applicable.

Objections to findings.—In a case where the decree was in favour of the defendant, and upon an appeal being filed by the plaintiff against that decree, the defendant filed objections to certain findings in the judgment against him and paid a court-fee of 8 annas, *held*, that the court-fee was sufficient in as much as the objections were not cross objections within the

meaning of Order 41, Rule 22 of the Code of Civil Procedure and what the respondent was seeking to do was to support the judgment of the lower Court, *Bhajan Lal* v. *Chahat Rai*, 15 All L J. 325: 39 Ind Cas 279

Where the decree of the lower Court is entirely in favour of the respondents and it totally dismissed the suit by the plaintiff, the respondents could support the decree on any ground they like, and if with that purpose they filed a petition stating grounds upon which they supported the decree, that is not a cross objection for which an *ad valorem* court-fee is payable, *Ram Prosad Kalwar* v *Musst Ajanasia*, 44 All 577· 68 Ind Cas 861.

Petition by a respondent criticising the judgment is not a cross objection and hence not liable to stamp duty. *Shahdeo Nath Deo* v. *Kusum*, I L R 1 Pat. 258 See also *Damodar Prosad* v *Masudan Singh*, 105 I C 108

A memorandum of objection filed under Order 41, Rule 26, C. P. C is not an application, therefore no court-fees need be paid, *Mahammad Salimullah Khan* v *Khalil-ur-Rahaman Khan*, (1932) 54 All 465: 1932 A L J 149: 140 I C 47· 1930 A I R 526 (All)

Decree.—Where a decree is obtained against a firm and execution is refused as against the alleged partner, the memorandum of appeal is to be stamped with *ad valorem* court-fee under Art 1, Schedule I of the Court Fees Act In such cases Art 11 of Schedule II does not apply, *Valiappa Chetty* v *Rangaswamy Naicker*, 8 L B R 300 35 Ind Cas 429

Decree with a condition —Where a decree awards possession on condition that the plaintiff to pay all the encumbrances on the property, and the plaintiff appealed against that part of the decree which required him to pay the encumbrance, the court-fee payable on the memorandum of appeal must be *ad valorem* on the amount of such encumbrances, *Kishen Dutt* v *Kasi Pandey*, 5 Pat L J 455· 1 Pat L T 738 57 Ind Cas 481, *Basdeo Ram* v *Sri Krishna Gir*, 13 O C 62 5 Ind. Cas 941.

The plaintiff obtained a decree for possession conditional upon the payment of a certain sum of money and on his failure to pay that sum, the decree would be null and void. If the plaintiff files an appeal against the condition, he must stamp his memorandum appeal with a court-fee calculated upon the sum decreed by the last Court, *Pirbhu* v *Soudagar*, 33 P R 1884.

In a suit for possession of an area of land mortgaged by the predecessor-in-title without payment of any sum, the lower appellate Court decreed the suit on condition that the plaintiff can obtain possession after payment of Rs 967 to the defendant

in possession. On appeal to the High Court by the plaintiff-appellant, counsel for the respondent raised the question of court-fees The High Court held, "the relief sought being the removal of this condition precedent, court-fees must be paid on the amount so fixed" and followed the decision of *Wadhawa Singh* v. *Sunder Singh,* 59 Ind Cas. 607: 21 P.L.R 1921; *Tikkan Ram* v. *Bosa Ram,* 67 Ind Cas 106 (Punjab). See also *Ragha Sha* v. *Wajib Ali,* 50 Ind Cas 353, where it was held that as the defendants were ordered to pay and not the plaintiffs, therefore in an appeal by the plaintiff the memorandum need only be stamped with a court-fee calculated *ad valorem* on five times the Government Revenue payable for the lands in dispute.

Where the appellant seeks to realise their property from a charge declared by the lower Court to be on the property, the memorandum of appeal should bear a court-fee *ad valorem* on the charge declared, *Tharu Mal* v *Chandra Ram,* 11 P.R. 1916: 59 P.W.R 1916 *This is also the case in case of appeals* by transferees on the ground that the property having been alienated before the date of mortgage, it is not liable, *Sheoraja* v. *Debi Din,* 5 O L J 663 48 Ind Cas 535

Where the plaintiff sued for revovery of mortgage money by a sale of two properties but the trial Court ordered that one of the properties be proceeded with first and if the proceeds do not satisfy the decree then the second property be sold *Held,* that as regards the condition the memorandum of appeal is to be stamped with a court-fee of rupees 10 plus *ad valorem* court-fees on the amount disallowed, *Ujagar Lal* v *Mohan Kuar,* (1886), 6 All W N 312

Where a decree grants relief on payment of a certain sum to the defendant the court-fees payable on the memorandum of appeal against so much of the decree as directs payment is *ad valorem* on the said sum *irrespective of the nature of the suit, In re Parkodi Achi,* 45 Mad 246: 41 M L J 587: 1921 M.W.N. 854: 14 L.W. 624· 68 I C 444· 1922 A I.R. 211; *Lekh Ram* v *Ramji Das,* I L R. 1 Lah. 234 3 L.L J 370: 144 P.W.R. 1920: 57 I C. 215; *Balkishan Das and others* v. *Musst. Jendo,* 108 I.C. 370: 10 L L J 55

Conditional decree in favour of reversioners—Where the plaintiffs sued as reversioners and in the alternative prayed for redemption, and the trial Court ordered redemption on payment of certain sum but the plaintiff appealed on the ground that he is not liable to pay any sum *Held,* that the memorandum of appeal should be stamped *ad valorem* on the amount they were ordered to pay, *Mata Badal Singh* v *Jai Singh,* 15 Ind. Cas 746.

[illegible] suit for possession of property where the trial Court de[illegible]ed the suit conditional upon plaintiff's paying a sum to

the defendant and where the appeal is against that part of the decision which imposes the liability, the memorandum of appeal is to be stamped with court-fees *ad valorem* on the amount from which the plaintiff-appellant seeks to escape liability The value of [illegible] granted by the c[illegible]f, *In re Porkodi* [illegible] J. 587: 1921 M.W.N. 854: 14 L.W. 624: (1922) A I.R. 211 (Madras)

Other conditions—Where the plaintiff sued as transferee of certain properties from one Musst Gomi, and for possession and obtained a decree limited to the life-time of Musst Gomi and the plaintiff thereupon filed an appeal to the High Court to have this condition removed. *Held*, that the memorandum of appeal is properly stamped with a court-fee of rupees ten, *Rup Chand* v *Fateh Chand*, 8 All L J 821. 33 All 705.

Alienation by manager of a joint Hindu family—conditional decree—The plaintiff—a member of a joint Hindu family—sued for possession of half share of the family property alleging the same to have been improperly alienated by the manager, and the trial Court decreed the suit on condition of the plaintiff paying Rs 12,000 to the alienee defendant The defendant preferred an appeal claiming that the entire suit should have been dismissed in toto, *held*, that the appellant was bound to pay court-fees only on the value of the lands decreed to the plaintiff, such value to be ascertained in the manner prescribed by section 7, cl v of the Court Fees Act It was further *held* that if the plaintiff appealed on the ground that the amount he was ordered to pay, is too large then *ad valorem* court-fees are to be paid on the amount by which he wants that amount to be reduced, *In re Ganapati Butchi, Seethayamma*, 47 M L J 919 85 I C 405· 48 Mad 652. 21 L W 15: 1925 A I R 323 (M)

Where a suit by a son for declaration that certain alienations by the father of a family governed by the *Mitakshara* Law of inheritance would not be binding on the reversionary interest, was decreed but a portion of the consideration money was declared a charge upon the property, *held* that the memorandum of appeal against the declaration of charge should be stamped as a declaratory relief as the memorandum of appeal need not bear a higher court-fee than the plaint, *Harbhagwan* v. *Amar Singh*, 5 Lah 137 83 I C 332· 1924 A I R 530 (Lahore)

The plaint in a suit by a reversioner to prevent the holder of an inalienable estate, which the then holder is about to alienate requires *ad valorem* court-fees to be paid on it, although the court-fees payable would be Rs 10 when the suit is instituted after the death of the holder, *Pratap Singh* v. *Nanhelal and others*, 110 I C 163. 1928 A I.R. 243 (Nag.)

Conditional-redemption—In a suit for the redemption of a mortgage the plaintiff obtained a decree for redemption conditional upon payment by him of a sum fixed in the decree. The plaintiff appealed upon the ground that such sum was in excess by a specified amount of the sum rightly payable by him for redemption *Held*, that the court-fees payable on memorandum of appeal are to be calculated upon the amount which the appellant claims to be deducted from the decree and not as in the case of redemption, according to the principal sum secured by the mortgage, *Nepal Rai* v. *Devi Prosad*, (1905), 25 All. W.N. 40: 27 All 447: 2 All L J 105 Where in a foreclosure suit a decree was passed in favour of the plaintiff conditional upon his payment of rupees 5,914, 6 annas 5 pies and if the plaintiff-appellant wants to get rid of the condition imposed upon him by the trial Court he must pay court-fees *ad valorem* on the amount he is ordered to pay, *Baji Lal* v *Goverdhan Singh*, 31 All. 265: 6 A L.J 155: 1 Ind Cas 100, see also *Moti Begum* v. *Har Prasad*, 16 All L.J 81. 47 Ind Cas 311 (claim for dower charged upon property) but in *Ragha Sha* v *Wajib Ali Shah and others*, 50 Ind Cas 353, the Oudh Judicial Commissioner's Court held that the court-fees payable in a suit for possession, is under section 7, paragarph v although the lower Court may have allowed possession in case the defendants fail to redeem.

Two preliminary decrees—The Court of 1st instance in a suit for redemption passed in effect two decrees It first passed a decree declaring the plaintiff's right to redeem, which was denied by the defendants and against which the defendants filed an appeal and then while the appeal was pending, a second preliminary decree was passed deciding the amount for which redemption might take place Against that decree the defendant also appealed *Held*, that the two appeals are not to be regarded as separate appeals for the purpose of assessing court-fees but should be counted as one as there is no warrant for the procedure adopted by the lower Court in embodying in the form of a decree its decision on the question of the plaintiff's title to redeem The Court should have gone on to ascertain the amount due and then, and not till then, have passed its decree and the public are not to be penalized for no fault of theirs to pay court-fees twice over. *Lalta Prosad* v. *Sheoraj Sinha*, 39 All 452: 15 A L J. 464. See *contra*, *Raja Peary Mohan* v *Manohar* in 27 C W N. 989 (991, 992): 38 C L J. 255: 74 I.C 373, where the Calcutta High Court held, that if after passing of a preliminary decree where accounts were ordered to be taken, a further order is passed by the Court determining the period for which accounts are to be taken, such order is also a preliminary decree.

Appeal against the final decree during the pendency of the appeal against the preliminary decree.—The plaintiff

valued the relief for recovery of land at Rs 1,020 and of the *mesne profits* antecedent to the suit at Rs. 4,199-8 and obtained a decree. The defendants appealed to the High Court and valued their appeal at Rs 5,219-8 and paid court-fees *ad valorem* on the memorandum of appeal. During the pendency of this appeal the proceedings for the assessment of *mesne profits* were carried on and the *mesne profits* assessed at Rs. 2,570-1-10 pies. The defendants wanted to prefer an appeal against this decree assessing the *mesne profits* and the High Court held that they cannot be called upon to pay court-fees over again and held that if the decree had been for a higher sum then they could have been called upon to pay court-fees upon the difference between the original claim and subsequent assessment, *Kanchan Mandar* v. *Kamal Prasad*, 16 C.L J. 564. 15 I C 572

A suit for account was approximately valued at Rs 1,000 and preliminary decree was passed and appeal was preferred against the preliminary decree on the approximate valuation During the pendency of the appeal from the preliminary decree a final decree was passed decreeing Rs 6,000 as due The court-fees payable on the memorandum of appeal from the final decree are to be assessed on the amount decreed in the final decree less the amount decreed in the preliminary decree The fact that the plaintiff will have to pay additional court-fees on the increased amount does not relieve the defendant-appellants from paying court-fees Art 17 of the second schedule would not apply as the appellant seeks to set aside a definite amount decreed, *Kanti Chandra Tarafdar* v *Radha Raman Sikdar*, 33 C W.N 743 1929 A I R 815 (Cal)

Where full *ad valorem* court-fees were paid on the memorandum of appeal on the appeal against the preliminary decree in suit for redemption, the memorandum of appeal against the final decree need only bear a court-fee of Rs 2, *Bhuddu Ram* v. *Niamat Rai and others*, 1923 A I R 632 (Lahore) I L R. 4 Lahore 406 6 L L J 72

The plaintiff sued for possession with *mesne profits* He valued the land at Rs 775 and approximately valued *mesne profits* at Rs 4,693-8-3 The suit was decreed for possession and *mesne profits* were ordered to be ascertained An appeal was preferred to the High Court on which full court-fees were paid The appeal was dismissed by the High Court The *mesne profits* were then ascertained and found to be Rs. 1,604-10-3 The defendant appealed to the District Judge and on the dismissal of his appeal preferred a second appeal to the High Court The High Court said "The appellant has paid the court-fee, and in fact more than the court-fee payable on the amount of the decree for the *mesne profits* against which he appeals, and I can see no reason why he should be required

to pay again When he first appealed, the amount of *mesne profits* had not been ascertained but had only been ordered to be ascertained The fee was paid on the amount at which the plaintiff estimated the *mesne profits* This turns out to be much more than the *mesne profits* actually awarded Therefore the appellant has really paid more than the decree that has now been made against him would have necessitated There is a further reason against requiring the appellant to pay an additional court-fee on the memorandum of appeal before the District Judge The appeal was incompetent The District Judge had no jurisdiction as the appeal lay to the High Court," *Ram Mandar* v *Maharani Nowlakhbati*, I L R 3 Pat 815 1924 Pat C.W.N. 206: 79 Ind Cas 908: 1924 A I R 694 (Patna) (In this case the memorandum of appeal to the District Judge bore only a court-fee of eight annas, hence the question of court-fees arose).

Appeals against preliminary and final decrees.—Section 97 of the Code of Civil Procedure (V of 1908) does not prevent a party from filing a combined appeal against a preliminary and a final decree, if the dates permit him to do so . ...."we will permit the appellant to have a reasonable time to combine such objection, if any, he may have against the final decree in this appeal, of course, the court-fees, such as may be necessary, will have to be paid" Per Scott, C J, in *Balwant Sing Ram Chandra* v *Sakharam Mancharam*, 18 Bom L R 80 (note): 33 I C. 137; *Kanchan Mandar* v *Kamala Prosad*, 16 C.L.J 564: 15 Ind Cas 572; *Dottatraya Ramchandra Savale* v. *Ajmuddin Fakruddin*, 18 Bom L R 76 33 I C 146, where the system of filing appeals against preliminary decrees after the final decree was passed, was deprecated as an attempt to evade payment of stamp duty (but in this case the amount of the peliminary decree was lower than that of the final decree). There the defendant-appellant filed an appeal against the preliminary decree on a stamp of rupees ten after the passing of a final decree for a higher amount See also *Khanhaiya Lal* v. *Tribeni Sahu*, 36 All. 532: 12 A L J 876: 24 I C 827

A party who has paid *ad valorem* court-fees in an appeal from the preliminary decree in a suit for accounts on the valuation made in the plaint, need not pay the same court-fees over again in the appeal from the final decree in that suit but need only pay *ad valorem* court-fees on any excess amount found to be due. The appellant will not be entitled to deduction, if he files the appeal after the disposal of the appeal from the preliminary decree, *Supputhayammal, In re*, 62 M L J 624: 55 Mad 664: 35 L.W. 621: 1932 M W.N. 438: 1932 A I R 453 (Mad)

In an appeal against a preliminary decree under section 215A (Or. 20, Rule 16), C P. C. the appellant ought to pay *ad valorem* court-fee on the amount at which the suit was valued

in the plaint under section 7 (iv) (c), *Bhagat Ram* v. *Gapalchand*, 150 P.R 1908

The defendant in a suit for accounts may prefer a single combined appeal against the preliminary and the final decrees if the dates permit him to do so, but in determining whether the appeal is to be regarded as an appeal against the preliminary or a final decree or against both, the dates of the decrees and the valuation of the appeal are more material than the grounds of the appeal, *Damodar Padhano* v *Haribandhu Patnaick*, 14 L.W. 389: 1921 M.W.N. 558 70 Ind. Cas 392 (Madras)

Where an appeal was pending from the preliminary decree it was not necessary for the mortgagee to file another appeal from the final decree Therefore the court-fees paid on the memorandum of appeal from the final decree were ordered to be refunded, *Swami Dayal* v *Muhammad Sher Khan*, 1925 A.I R. 39 (Oudh)· 88 I C 829 11 O L J 148 See also *Nanibala Dasi and another* v *Ichhamoyee Dasi and others*, 40 C L J. 291· 84 I C 674: 1925 A I R 218 (Cal), where the memoradum of appeal against preliminary decree in a suit on a mortgage bond was allowed to be amended and the appeal to be converted into a combined appeal both against preliminary and final decrees See also *Kulada Prasad* v *Ramanand*, 25 C.W N 776 33 C L J. 414

Separate appeals by individual appellants when they could have preferred joint appeal.—When two out of a larger number of defendants against all of whom a decree for a certain sum had been passed, elected to present two entirely distinct and separate appeals though they were entitled to file a joint appeal, *held*, there is no provision of law which would exempt the memorandum of appeal filed at the later date, from also bearing, as the other did, the full *ad valorem* court-fee payable, *Panna Lal* v *Marwar Bank, Ld of Hissar*, 91 P R 1918 48 Ind Cas 424 Where two defendants filed two separate appeals from a decree in a suit for redemption, against orders of Court allowing redemption on payment to each of the defendants a moiety of the mortgage money, *held*, that each appeal should be stamped *ad valorem* on the amount under section 7, paragraph 9 of the Court Fees Act, *Umar Khan* v *Mahomed Khan*, 10 Bom 41

But the Court Fees Act does not provide for consolidation of appeal If, therefore, there were two appeals in the same suit, and then one party files two second appeals one against each decree in the first appeal, the appellant will have to pay the full court-fee on each of the appeals, *Shib Dayal* v *Meherban*, 43 All 56· 18 All L J 894: 58 Ind Cas 230 The High Court said: "It is a pity that one appeal cannot be filed as it seems unjust to make a man pay double court-fees because under law it is necessary for him to file two separate appeals."

Dower.—In a suit for recovery of property in the possession of a Muhammadan lady, the defendant (the lady) pleaded *1st*, that the plaintiff had no title, and *2nd*, that she is not entitled to a decree for possession without payment to the defendant of Rupees 8,000 the amount of decree due to the defendant The Court of first instance decreed the suit for possession, holding that payment of the defendant's dower, whatever it might amount to, was not a condition precedent to the plaintiff's obtaining a decree. The defendant appealed, paying court-fee on the value of the property; on a reference by the taxing officer as to whether she was not liable to pay *court-fees on Rupees 8,000* as well, *held*, that the subject-matter in dispute in the appeal was the property of which possession is sought and the court-fee paid was sufficient Mr. Justice Tubdall said· "In my view it seemed to me impossible to hold that the amount or value of the subject-matter of the appeal is anything more than the value of the property which the plaintiff is seeking to recover and which the defendant is seeking to retain," *Haidari Begum* v. *Gulzar Bano*, 36 All 322: 12 A L J. 481· 25 Ind Cas 395. See also *Moti Begum* v. *Har Prasad*, 47 Ind Cas 311: 16 All L J 81

Ejectment and mesne profits.—A memorandum of appeal from a decree directing an ejectment and awarding *mesne profits* is chargeable with court-fees calculated both on the land and on the *mesne profits* allowed, which are the subject-matter of appeal, *Brahmayya* v *Lakshminaram*, 16 Mad 310.

Foreclosure.—See under redemption and under section 7 (ix) See the case of *Jagatdhar Naram* v *Brown*, 33 Cal. 1133: 10 C W N 1010 4 C L J 121 which says the valuation must be on the purchase-money in a suit against purchaser of the equity of redemption See *Ghastram* v. *Liladhar*, 9 N L R. 86. 20 I.C. 257.

Grounds of appeal going to the root of the whole of the respondent's case.—Where one of several appellants take a ground of appeal, which goes to the root of the respondent's case, and which if successful, would deprive the respondent of his decree as a whole and not merely of his interest in it *quod* the particular appellant, the appellate Court is justified in refusing to hear the appeal on such grount as aforesaid unless he pays a court-fee sufficient to cover the whole relief obtainable on such grounds of appeal, *Bujhawan Rai* v. *Mukund Lal*, 15 All 112: 12 All.W.N. 248

Limitation.—Where the plea of limitation involves dismissal of suit and the appellant fails to pay the court-fees on the entire claim within the period prescribed for an appeal, the appellate Court cannot give him the advantage of limitation, as the law

is, that where a suit ought to be dismissed in *toto* as time barred, the defendant must appeal on the whole and not on any particular portion of it, *Hukum Singh* v. *Shahab Din,* 14 P.W.R. 1918, 44 Ind Cas 890

Misjoinder—When the plaintiff brought one suit for sale upon several mortgages against several defendants and a decree was passed in their favour, some of the defendants who were liable to pay a part only of the decretal amount appealed on the ground that the suit is bad for misjoinder of parties. *Held,* this ground went to the root of the whole of the respondent's case and *ad valorem* court-fee on the entire decree was payable, *Dilwar Husain* v *Bhagwat Das,* 4 All.L J. 130 (1907) 27 All. W N 63

Hypothecation.—Where the trial Court in a suit on a hypothecation bond exonerated the 2nd defendant but passed a decree against the 1st defendant for the whole amount, *held* that the plaintiff in appealing against the decree with a view to make the 2nd defendant who was made the sole respondent, liable, must stamp the memorandum *ad valorem* on the amount sought to be recovered, *Ramasami* v *Subbusami,* 13 Mad 508.

Instalment decree.—When the lower court ordered that the decretal amount be paid in three instalments, *held* that the court-fees should be calculated upon the difference between the amount claimed in the court below and the sum of the present values of the three instalments payable on the dates mentioned in the decree reckoning interest at the rate allowed, *Lukhun Chunder Ash* v *Khoda Buksh Mondul,* 19 Cal 272

The memorandum of an appeal by the decree-holder from a decree for money allowing payment by instalments, must be stamped on the difference between the amount claimed in appeal and the amount decreed and also on the difference to the appellant between getting his money on the date of the decree under appeal and getting it by instalments as ordered, *Lala Govind Lal* v *Rao Baldeo Singh,* 12 P W R 1914 226 P L R 1914, 24 Ind Cas 931 But if the decree be, that on the defendant furnishing security the decretal amount will be payable by instalments then the memorandum of appeal is to be stamped with a court-fee of rupees ten under Article 17, clause vi, Schedule II of the Court Fees Act as the subject-matter cannot be valued because all that they ask is that they may be allowed to satisfy the debt in a particular way, *Beharilal* v *Seth Nanhe Lal,* 14 C.P L R 172

Interest.—No additional stamp is required on account of claims for interest from the date of institution of the suit until payment, *Vithal Hari Athvale* v. *Vasudev Thosar,* 18 Bom 41, the reason being none are payable for future *mesne profits;* but

in *Dwarka* v *Devendra*, 33 Cal 1232, it has been held that there is no analogy between future *mesne profits* and future interest, the latter being penal in its nature and is no part of the claim or relief granted as in the case of *mesne profits* The proper court-fees payable on memorandum of appeal claiming interest up to the realization of mortgage money is rupees ten under Art 17 (vi) of the second Schedule of the Court Fees Act, *Bhawani Prasad* v. *Kutubunnissa Bibi*, 27 All. 559: 2 All L J. 363: 25 (1905) A.W.N 84; *Ram Bujhawan* v. *Natho Ram*, 1922 Pat C.W N 59: 3 P.L T 146. 70 Ind Cas. 483.

Interest during the pendency of suit—The appellant is not liable to pay court-fees on the amount of interest from the date of grace up to the date of the hearing of the appeal, *Bhagwati Prashad Singh* v. *Bishun Narain*, (1922) Pat. C.W.N. 73: 6 P L.J 676· 3 P.L T. 310

"When a mortgage suit is dismissed the plaintiff is entitled to value his appeal at the sum claimed in the plaint in respect of principal and interest up to the date of filing the plaint and is not bound to value the future interest which he may claim from the date of the suit up to the date of realisation or to pay court-fees thereon, but if any future interest is determined by the trial Court and is entered in the decree then the plaintiff on appeal by the defendant, is bound to pay additional court-fees on the sum of interest so added in the decree as having accrued from the date of suit up to the date of preparation of the decree in the lower Court," *Kali Prasad Singh and others* v *Mathura Singh and others*, 77 Ind Cas 1054: 1923 A.I.R. 28 (Patna).

Where a suit on a mortgage bond was dismissed by the trial Court, the plaintiff cannot be required to pay additional duty on any amount in excess of the amount claimed in the plaint by reason of the fact that additional interest has accrued due during the pendency of the suit in the trial Court; but it might be otherwise when the defendant appeals, *Sadhu Saran Rai* v. *Lala Barhamdeo Lal and another*, 8 P L T 355: 103 I.C. 592: 1927 A I R. 230 (Patna), *Debi Lal* v. *Gossain Kolashar*, 105 I C. 395· 1928 A I R 58 (Patna): 5 P.L.T. 548, *Thakan Chaudhuri* v *Lachmi Narain*, 14 Patna 4: 15 P.L T 548: 152 I.C. 244: 1934 A I.R. 571 (Patna), S.B.

A claim for interest *pendante lite* disallowed by the trial Court, is a part of the amount or value of the subject-matter in dispute. Therefore, *ad valorem* court-fees on the amount of the interest claimed are payable, *Damodar Pershad* v. *Hardeo Pershad*, 52 All. 1029: 1931 A L J. 233: 131 I C. 253: 1931 A I.R. 351 (All): 1931 I.R. 365 (All.). See also *Bhagshah* v. *Labha Mal and others*, 1933 A.I.R 941 (Lah): 148 I C 213

Future interest.—Although future interest is not to be taken into account, still in all appeals from original decrees, the court-fee is to be calculated on the sum due at the date of passing the original decree and in all second appeals it should be levied on the sum at the date of the decree of the lower appellate Court and in all cross-objections when these can be ascertained by reference to the judgment and the decree, it is at that amount at which appeals or cross-objection are to be valued, *Rawlins* v *Lachmi Narain Jha*, 3 P L J 443: (1918) Pat. C W N 264: 44 Ind Cas 50, *Bhagwati Prasad Singh* v. *Bishun Pragash Narain*, 6 P L J 676: 1922 Pat C W N 73 3 P L.T 310; *Raghubir Prasad* v *Shanker Bux Singh*, 36 All. 40: 11 A L J. 1016. 21 Ind Cas 723

In appeals relating to future interest, the proper court-fee is an *ad valorem* fee on the amount of interest claimed up to the date of presentation of appeal, *Gobardhan Das* v. *Narendra Bahadur Singh*, 22 O C 1: 50 Ind Cas 798

In an appeal from a decree awarding future interest, the interst accruing subsequent to suit need not be included, *Srinivas Row* v *Ramaswami Chetti*, 10 M L J 144 See also *Reference under the Court Fees Act*, 29 Mad 267: 16 M L.J. 287

Ad valorem court-fees are payable on interest decreed up to the date fixed for redemption, *Valiram* v *Karachi Bank*, 23 S L R 277: 104 I C 391 1927 A I R 251 (Sind)

Where the appellate Court awarded additional interest over and above the sum awarded by the trial Court, *held*, that the memorandum of appeal ought to bear *ad valorem* court-fees on the amount of interest awarded, *Jamuna Rai* v *Ramtahal Raut*, I L R. 1 Pat 19: 1922 Pat C W N 387 77 Ind Cas 1039

In an appeal from an order in execution of a decree where future interest is awarded the memorandum is to be stamped with an *ad valorem* court-fees on the amount calculated on the difference between the amount awarded under the decree (on which court fees were paid) and the amount claimed in the appellate Court up to the date of the appellate decree, *Tarapada Mitter* v *Ram Jagadamba*, 5 Pat L J 235; (the arguments proceeded upon the grounds that s 47 (2) is entirely new, but subsequent Notification No 1872J published in *Calcutta Gazette*, dated 1st June, 1921, speaks of section 47 instead of section 244 (c), consequently this decision has now no force, so far as Bengal is concerned) See similar Notification for Patna in the Appendix See *Bhawani Parshad* v *Qutabunnissa* 27 All 559: 2 A L J 263 1905 A W N 84, where it was held that proper court-fee payable on a memorandum of appeal in the suit up to

the date of realization of the decree is Rs. 10 under Sch. II, Art 17 (vi)

Interest on mesne profits—In *Mithoo Lal* v *Musst. Chameli*, 1934 A L J. 957· 150 I C 653: 1934 A.I.R. 805 (All), it was held that court-fees on interest accruing due between the date of suit and the date of the decree, need not be paid.

Inter-pleader suit.—In an appeal from a decision in an inter-pleader suit in respect of money, the court-fee payable is rupees ten under Article 17, clause vi of Schedule II of the Court Fees Act and not an *ad valorem* fee calculated under section 7 (vi) (c) of the Court Fees Act, *Brij Narain* v. *Balmiki Prosad*, 61 Ind Cas 820· 3 Pat.L.T. 280.

Landlord and tenant.—See also under "Landlord and Tenant" *supra* The perpetual (mourashi) character of the plaintiff's lease under which the claim was having been disallowed, an appeal was preferred to have it declared that the lease was perpetual *Held*, as the value of the claim would be the difference in the value of the land as held under a mourashi tenure at a fixed rent or an ordinary tenure at a fluctuating rent, and as this might be an extremely difficult calculation, the stamp upon the memorandum of appeal would be properly fixed according to the valuation put by the appellant upon the subject-matter of the claim, *Kebal Ram Mundal* v. *W S Wells*, 24 W R 454

Where a suit is decreed against defendant by the lower Court, that he do pay to the plaintiff rent for certain (Fasli) years at the rate of 2½ per cent on the gross revenue of the zemindary and the determination of the amount was reserved for execution proceedings, an appeal from that decree is capable of being valued and the appellant is to value the appeal under section 7 (iv) (f) of the Court Fees Act, *Reference under the Court Fees Act*, 4 M.L J 12.

A landlord defendant appealing from a decree by the lower appellate Court, awarding possession to the disputed land to the tenant plaintiff, against the landlord and also one of the two tenant defendants, the claim against the other tenant defendant having abated, cannot claim in second appeal that he is only to pay court-fee as on an appeal from a declaration only, because the plaintiff tenant will in that case be his tenant and therefore the question of possession does not arise, *Haladhar Pal Chowdhury* v. *Sheikh Mongal Reja*, 34 C.W N. 217: 126 I C. 777: 1930 A I.R. 793 (Cal.).

A memorandum of objection against a decree of the first appellate Court declaring that a distraint is valid only to the extent of Rs. 2,000 and odd and in which no question was raised that went to the root of the whole matter and thus render the

distraint invalid but in which question as to the exact amount of rent due was raised, is capable of valuation and therefore does not fall under Art 17 (b) of the Court Fees Act as amended in Madras and is to be stamped with *ad valorem* court-fees, *The Maharajah of Pitapuram* v *Srichelikani Venkatarayanim Garu*, 57 M.L J. 260: 1929 M W.N. 608: 30 L W 357: 122 I C 526: 1930 A.I.R 22 (Mad).

Appeal for declaration of a lien.—Where the mortgagee appeals on the ground that the lien be declared, the valuation for the purpose of stamp in such appeal would be with reference to the value of the lien and not to the value of the mortgaged properties, *Mahomed Sheerun Khan* v *Koondan Lal*, Agra F.B 158

Mesne profits.—In an appeal from a decree directing ejectment and *mense profits*, the court-fee should be calculated on the land and on the *mense profits*, both being subject-matter of the appeal, *Brahmayya* v *Lakshmi Narasimham*, 16 Mad 310 And improvements by tenant are not to be taken into account, *Reference under the Court Fees Act*, 23 Mad 84

Where a decree allows *mesne profits* and directs inquiry to be made subsequent to the institution of the suit and a final decree is passed in accordance with Order 20, Rule 12, C P C, an appeal against such a decree is chargeable under Art I, Schedule I of the Court Fees Act with *ad valorem* court-fees calculated on the amount of the *mesne profits* in dispute, *P. Balaram Naidu* v *P Cangan Naidu*, 45 Mad 280· 42 M L J 184: 69 I.C 722: 30 M L T 83· 14 L W 730· 1923 A I R 19 (Mad)

A memorandum of appeal from an order dismissing an application for ascertainment of *mense profits* must be stamped with an *ad valorem* stamp on the amount claimed It is doubtful whether an appellate Court has power to allow a party to reduce the claim in order to relieve him from liability to pay proper court-fees, *Narain Prasad* v *Kameshar Prosad Singh*, 3 Pat. L J 101 43 Ind Cas 489

A suit for recovery of possession of land and *mesne profits* which was valued at the value of the land *plus* the amount of antecedent *mesne profits* was decreed in its entirety, but the Court did not ascertain the amount of *mesne profits* The defendant appealed, challenging the whole decree *Held*, that the appeal must be valued at the same valuation as the suit and must bear the same court-fee stamp, *Manick Chand Ram* v. *Bibi Najiban*, 49 Ind Cas 962 (Patna)

Ad valorem court-fees on the amount claimed must be paid. The practice of allowing plaintiffs to include in a suit for possession a claim for *mesne profits* without payment of court-

fees condemned, *Nand Kumar Singh* v. *Bilas Ram Marwari*, 3 P L. 967: 40 I.C. 579.

Where a suit for possession with *mesne profits* was decreed and an appeal preferred to the High Court on payment of full court-fees and afterwards on investigation as to the amount of *mesne profits* it was found to be much less than the amount in further appeal to the High Court an objection was raised that the memorandum of appeal to the High Court should have been stamped *ad valorem*, held, that full court-fees having been paid on the appeal to the High Court the memorandum of appeal to the District Judge was sufficiently stamped with a court-fee of 8 annas, *Ram Mandar* v *Maharani Nowlakhbati*, I.L R. 3 Pat. 815· 1924 Pat C W N 206 79 Ind Cas 908: 1924 A I R. 694 (Patna).

Where the *mesne profits* have been ascertained the court-fee payable is calculated on the ascertained rate, where the amount of *mesne profits* have not been ascertained the court-fee is chargeable on the valuation of *mesne profits* as claimed in the plaint, *In re Punya Nahako and others*, 50 Mad. 488: 52 M L.J. 128: 1927 M.W N. 101: 100 Ind. Cas. 72 (73): 1927 A I R. 360 (Mad)

Court-fees on the memorandum of appeal must be paid on the amount claimed as *mesne profits* (antecedent to the suit) and not under Art. 17, Cl vi, Sch II of the Court Fees Act, *Bunwari Lal* v *Daya Sunker* 13 C W N 815

Where mesne profits are directed to be ascertained in a separate proceeding.—A memorandum of appeal against a decree ordering possession of the property in suit and declaring that the amount of *mesne profits* to be ascertained in a future proceeding, is to bear court-fees on the whole decree at the same amount at which the subject-matter was valued by the plaintiff in the lower Court including the approximate valuation for *mesne profits*, *Deonandan Misra* v *Ganga Prasad*, 8 Patna 906· 10 P L T. 622: 120 I.C. 313: 1929 A.I.R 731 (Patna); *Nand Kumar Singh* v. *Bilas Ram Marwari*, 3 P.L J. 67: 40 I.C 579.

An application for ascertainment of *mesne profits* is not a plaint, *Ramgulam Sahu* v. *Chintaman Singh*, (1925) 5 Patna 361; *Bidyadhar Bachar* v. *Manindra Nath Deb*, (1925) 53 Cal. 14: 42 C.L.J. 49 F.B.

A memorandum of an appeal from a decree passed on an application for ascertainment of *mesne profits*, is to be stamped *ad valorem* on the amount in dispute, *Kedar Nath Goenka* v. *Chandra Mauleshwar Prasad Singh*, 11 Patna 532: 13 P.L.T. 304: 137 I.C 855: 1932 A.I.R. 228 (Patna).

Appeal as to amount of mesne profits.—A memorandum of appeal from a decree awarding a lesser sum than the amount

claimed, is to bear a fixed fee, *Sheodhin Singh* v. *Narangi Lal*, 11 P.L.T. 703: 129 I.C. 663.

Appeal as to period for which mesne profits are payable—The amount of court-fees payable on an appeal against an order about the period for which *mesne profits* had been decreed, is not an *ad valorem* fee on the amount of *mesne profits* claimed in appeal, but the court-fee will be payable when *mesne profits* have been ascertained, *Lala Jagdip Sahay* v *Khajuri Sahu*, 108 I.C. 801: 9 Pat L T 657

Valuation of appeal—See under sec. 11 of this Act

Where some of the defendants appeal—A preliminary decree in a suit for *mesne profits* was passed against all the defendants Some of the defendants appealed adopting a valuation calculated on the proportion which the area held by them bore to the total area from which the plaintiff was dispossessed. Then a final decree was passeed against all the defendants jointly after the commissioner submitted his report Those defendants who had filed an appeal against the preliminary decree, then filed an appeal against the final decree valuing the relief in the same way as they did in the appeal from the preliminary decree. The High Court held that as the final decree was passed against all the defendants jointly, court-fees *ad valorem* on the entire amount of the final decree and not on the proportionate part should be paid as the liability of the defendants cannot be split up and apportioned The High Court proceeded to lay down 'where a definite value is placed in the plaint on the *mense profit* claimed and the suit decreed, the defendant appealing from the decree must pay court-fees calculated *ad valorem* on the value of the *mesne profits* claimed in the plaint, whether the suit is only for *mesne profits*, or whether the claim for recovery of *mesne profits* accompanies a claim for recovery of land' An appeal differs from a mere application for *mesne profits* and a memorandum of appeal from a decree awarding *mesne profits* is liable to be stamped with *ad valorem* court-fees on the amount in dispute under Art I, Sch I of the Court Fees Act, *Dhanukhari Prasad Pardey* v *Ramadhikary Missir*, 12 Patna 188· 13 P L T 810 142 I C 617· 1933 A I R 81 (Patna) See also *Sideshwari Prasad* v *Ram Kumar*, 14 P L.T 180. 1933 A I R 234 (P)· 144 I.C. 684· 12 Patna 694, where it was also held that *ad valorem* court-fees are payable on the amount for which the appellant sought to avoid liability or on the amount by which he sought to enhance the deductal amount as in such a case the subject-matter of appeal falls within Sch I, Art 1 of the Court Fees Act

Money appeals against defendants exonerated.—The plaintiff sued for money several persons as defendants but

obtained a decree against only one of them, and then appealed against other defendants on the ground that the decree should have been passed aginst all of them jointly. *Held,* that the memorandum of appeal should be stamped with court-fees calculated *ad valorem* on the amount of the decree under Art. 1, Schedule I of the Court Fees Act and not with a stamp of Rupees Ten, *Amirchand* v. *Kanhaiya Ram,* 225 P.W.R. 1912: 86 P R 1912: 222 P.L R. 1912: 16 Ind Cas. 777. See also *Ram Kishan* v *Hirde Ram,* 71 I.C 737: 1923 A.I R. 135 (Lahore)

Where the plaintiff sued several defendants for recovery of money but obtained a decree against one of them, and thereafter he filed an appeal seeking a decree against the rest of the defendants; the appeal must be valued on the original claim and court-fees paid on the amount of the memorandum of appeal, *Anna Narayan Pavji* v. *Madhyama Sthitila Paraspara,* etc 46 Bom 840. 24 Bom. L R 313: 67 Ind Cas 364: (1922) A I.R. 172 (Bom.). See also *Ramasami* v. *Subbusami,* 13 Mad. 508.

Mortgage.—A mortgage decree was passed against the defendant making him liable for a sum but he appealed on the ground that he is an agriculturist hence not liable and valued the appeal at a nominal sum; the High Court held that the appeal should be valued at the decretal amount as the whole decree is to be set aside and court-fees *ad valorem* on the amount should be paid on it, *Mahomedali* v *Akbarali,* 36 Bom L R. 1234: 1935 A I R 69 (Bom): 154 I C. 550

In an ordinary suit for sale the value of the subject-matter of appeal is the amount which the Court below has declared to be due to the plaintiff on the date fixed for payment and the court-fee payable is *ad valorem* on that amount, *Baldeo Singh* v. *Kalka Prasad,* 35 All 84: 11 All L J. 20; *Husaini Khanum* v. *Husain Khan,* 29 All 471: (1907) 27 A W.N. 133: 4 All L J. 175.

Where the appellant seeks to establish that he is not liable to pay money adjudged by the lower Court to be due from him, he is to stamp his memorandum of appeal with *ad valorem* court-fee calculated on the decretal amount, *Mardan Singh* v *Sheoroj Narain Sinha,* 30 Ind Cas. 322.

The first mortgagee instituted a suit for sale against the mortgagor and also joined the puisne mortgagee a party to that suit. The mortgagor denied the puisne mortgage but the suit was decreed and the pu[illegible]
and a mortgage decree [illegible]
D of the Civil Proc[illegible]
against that part of th[illegible]
to be subsisting The Lahore High Court held that *ad valorem*

court-fees on the amount of the puisne mortgage are to be paid as the decree of the trial Court must be interpreted to be a decree for the payment of the amount of the puisne mortgage, *Khairati Ram* v *Chuni Lal and others,* 146 I.C. 1003: 1933 A.I R 954 (Lah).

A was impleaded in suit for sale on a mortgage as a subsequent transferee but it was found that A has parted with his interest in favour of his sons and A's only remaining interest was a right to receive maintenance which was made a charge upon the property in the hands of his sons. The suit was dismissed as against the sons but was decreed against A and the other defendants. A filed an appeal praying for a declaration that the decree be modified by granting a declaration that the plaintiffs are not entitled to get the charge sold The Allahabad High Court held this prayer to be a prayer for a declaration with a consequential relief and ordered that *ad valorem* court-fees on the valuation to be paid, *Mukund Ram* v. *Raqaiya Khatun,* 1931 A L J 150· 131 I C 39. 1931 A I R. 251 (All) 1931 I R 343 (All).

Mitakshara joint family—If the sons in a joint family governed by Mitakshara Law of inheritance appeal against a mortgage decree obtained against them and their father, on the ground that the mortgage and the decree are not binding against them as the debt was tainted with immortality and their shares are not liable to be sold, they need only pay court-fees on the valuation of their share of the property or the amount of the mortgage-decree whichever is less, *Sarangpani Ayyangar* v *Pichu Ayyar,* 1931 A I R 710 (Mad) 135 I C 11 1932 I R 43 (Mad)

Separate liabilities of different properties.—*Where the decree appealed against declares separate liabilities of different properties*—In a suit for sale on a mortgage, a decree was passed declaring separate liabilities of the different properties mortgaged One of the defendants whose property was held liable for specific sum of money appealed, *held* that the proper court-fee payable on the memorandum of appeal was a fee calculated on the sum of money for which the defendant's property was held liable and not one calculated on the full amount of the decree In the reason given in the judgment it was said, "if they succeed in this appeal, it is only those properties which will be released from the operation of the decree and it is only those sums which the decree-holder will lose " *Chhabraji Kunwar and others* v *Court of Wards,* 35 All 92 11 All L J 33, 18 I. Cas 577

Where the question whether the properties are liable to sold for the decretal amount and where liability of some

mortgaged properties is in question—Where in an appeal the amount decreed is not in dispute but the appellant disputes the liability of certain properties to be sold for the mortgage decree, and claims that the sub-judge should have held that the mortgage was not operative and binding against the appealing defendants so far as their shares in the mortgaged properties were concerned, the High Court held that the memorandum of appeal ought to be stamped with a court-fee calculated *ad valorem* on the value of these properties, *Jugal Pershad* v. *Parbhu Narain*, 37 Cal 914: 8 I C. 1145; *Pandit Sukh Nandan* v. *Lachman Prosad*, 17 O C 90: 24 Ind Cas 286

If the subject-matter of the appeal be whether certain properties are liable to be sold for the decretal amount and there is no dispute as to the amount in claim, then the court-fee is to be paid on the debt not exceeding the value of the property, *Venkappa* v *Narasimha*, 10 Mad 187; *Kesavarappu Ram Krishna Reddi* v *Kottakota Reddi*, 30 Mad 96: 16 M L J. 458: 1 M L T 311 F B ; *Tharu Mal* v *Chandan Ram*, 11 P.R. 1916: 59 P W R 1916 33 Ind Cas. 138

Where the appellant's appeal was against so much of the decree as rendered his property liable and sought that his property should be released from the effects of the decree, the proper stamp to be paid was an *ad valorem* fee on the value of the property not exceeding the value of the decree, *Atma Singh* v *Nathu Mal and others*, 96 I C 473 1926 A I.R. 408 (Lah): I.L R. 7 Lah 216: 27 P.L R 412 8 L L J 319

When the dispute is not as regards the amount due but the defendant-appellants say that they are not personally liable and they dispute the liability of the properties held by them for the decretal amount, *held* that court-fees *ad valorem* must be paid on the memorandum of appeal, calculated on the value of the properties sought to be exonerated, *Madho Ray* v. *Musst Bibi Mahbuwannissa*, I L R 5 Patna 721: 8 P L T 284: 98 Ind Cas. 807 1927 A I R 46 (Patna).

A memorandum of appeal seeking to exclude the property in dispute in appeal from liability to sale under the mortgage decree requires to be stamped *ad valorem* on the valuation. A fixed fee as in a suit for declaration is insufficient. It is the value of the debt or the value of the property, whichever is less that determines the value of the relief in appeal for the purposes of the Court Fees Act, *Punjaji* v. *Ramchand*, 24 N.L R. 142: 111 I.C. 650: 1928 A I R. 316 (Nag.).

If an appeal be filed against a mortgage decree in which the decretal amount is not disputed but the liability of some of the properties be in question, then the memorandum of appeal is to be stamped *ad valorem* on the market value of the properties

or the decretal amount whichever is less, *A U John and others* v. *Suraj Bhan and others*, 54 All 553: 1933 A.I R 45 (All.): 1932 A L J. 385: 136 I C. 837: 1932 I R 256 (All)

If a decree be passed excluding the assets of S in the hands of defendants 2 to 5 from liability for the decretal amount, then the memorandum of appeal against this decree is to be stamped *ad valorem* on the value of assets of S in the hands of defendants 2 to 5 or the liability under the decree which it is sought to be imposed whichever is less, *Sabir Husain and another* v *Farzand Hasan and another*, (1932) 54 All 608. 1932 A L J 387: 138 I.C 622· 1932 A I R 406 (All)

Order 34, Rule 3.—There is no difference in principle between a final decree for sale under Order 34, Rule 4 and one for foreclosure under Order 34, Rule 3 and anybody desiring to appeal against the final decree for foreclosure must pay *ad valorem* court-fees, *Balaji* v *Ballabh Das*, 107 I C 671· 1928 A I.R 146 (Nagpore), *Ramdhari* v *Chowdhury Magbul Ahmad Khan*, 18 O C 114

Orders refusing to extend time —An appeal from an order refusing to extend time for payment of the amount is an appeal from order under Or 43, Rule 1, cl (o), although an order for a final decree may have been passed, *Musst Manjari* v *Surajmal*, 111 I C 294· 1928 A I R 383 (N) But see *Dadnoo* v. *Somerath*, 7 N L R 41

Extension of time—The memorandum of an appeal by the mortgagee from the final decree in a mortgage suit on the ground that no time should have been extended to the mortgagor within which to pay the mortgage debt should be stamped with *ad valorem* court-fees as it is not an exception to the general rule that an appeal against the final decree requires *ad valorem* court-fees and also as it is not necessary to file an appeal against the final decree (7 N L R 41 10 I C 736 overruled) *Singai Raghubar Prasad* v *Chhogmal*, 130 I C 98. 1931 A I R 1 (Nag) 1931 I R 34 (Nag) F B

Order 34, Rule 4.—Where the unsuccessful defendant wishes to be relieved of the liability under a decree passed under Order 34, Rule 4, C P C, the court-fee payable should *prima facie* be calculated on the value of the liability which means the amount shown in the decree inclusive of interest up to the date fixed for redemption, *Valiram and other* v *Karachi Bank and others*, 23 S L R 277· 104 I C 301· 1927 A I R. 251 (Sind)

Appeal against order overruling objection—A judgment-debtor appealing against order rejecting his objection to the passing of the final decree for sale, must stamp the memo-

randum of appeal as an appeal from decree and not as an appeal from order, *Ahmad Rahman* v *A L A R Chettiar Firm*, 6 Rang 285: 110 I.C 87· 1928 A I.R 194 (Rang.). See also *Ranga Raju* v *Ethirajammal*, 53 Mad 155: 57 M.L.J. 718: 1930 A I R 30 (Mad): 30 L W. 846: 1930 M W N. 402. 1930 I R 687 (Mad)

Order under Order 34, Rule 5 (order absolute).—An application for an order absolute is an order in continuation of the original suit hence section 244, C. P. C is inapplicable and the appeal lies under section 540, C P C as an appeal from an original decree, *Manmatha Nath Ray* v. *Khetra Mohan Ghosh*, 29 Cal 651. An appeal from the final decree passed under Order 34, Rule 5, C P C (order absolute) requires *ad valorem* fees on the amount decreed and cannot be stamped as an appeal from order, *Bajrangi Lal* v *Mahabir Kunwar*, 35 All 476 F B.· 11 A L J 80. 21 Ind Cas 498 See also *Tajammal Husain Khan* v *Muhammad Husain Khan*, 14 A L J. 328 35 Ind Cas 158, *Jankibai Ramdayal* v *Chimna Sadashiv*, 22 Bom L R 811: 57 Ind Cas 579

Ad valorem court-fee should be paid on a memorandum of appeal from an application for an order absolute under section 89 (Order 34, Rule 5, C P C) of the Transfer of Property Act, *Charu Chandra Mitter* v *Bhagirath Pershad*, 12 C W.N. 1028 See also *Bechu Singh* v *Becharam Sahu*, 10 C.L J. 91 (appeal by J D), *Bibi Barkatunnissa Begum* v *Bibi Quammarunnissa*, 50 Ind Cas 279 See *contra Balmukund* v. *Haji Husanali Bohra*, 14 C P L R 100

Order under Order 34, Rule 6, C. P. C. (Personal decree).—An order on an application for a decree under Order 34, Rule 6, C. P C is a 'decree' as that term is defined in the Code An appeal, therefore, from such an order must bear *ad valorem* court-fee stamp and not merely a two rupee stamp, *Muhammad Iltifat Hussain* v *Ahmunnissa Bibi*, 40 All. 553: 47 Ind Cas 561; *Tajammal Hassain Khan* v *Muhammad Hussain Khan*, 14 All L J 328· 35 Ind Cas 158; *Bindhiachal Rai* v. *Sita Misir*, 74 Ind. Cas 21 (All) In appeal against an order under Order 34, Rule 6 of the Code of Civil Procedure the memorandum is to be stamped with *ad valorem* court-fees; *Ayyakutti Mankondan* v. *Periyasami Kavandan*, 30 Ind Cas 497; *Saiyed Wasi Ali* v. *Jung Bahadur Singh*, 18 O C. 121. See also *Lakhi Narain Jagdeb* v. *Chowdhury Kirtibas Das*, 18 C L J. 133 (appeal by J. D.), where the effect of pendency of appeal was considered; this case was considered in *In re Kartic Chandra*, (1934) 39 C.W.N. 315.

If in a preliminary decree in a mortgage suit, the Court orders sale of the mortgaged properties and also if the proceeds

do not satisfy the decree than the plaintiff was given option to apply for a personal decree against the mortgagor, then the memorandum of appeal for the personal decree portion only, is to be stamped the *ad valorem* on the excess of the decree over the net sale proceeds, although the same may be more or less conjectural, *Venkatarama Sastrigal* v *Sabapathi Tevar,* 57 Mad. 632: 66 M L J 348: 1933 M W N. 1408. 39 L W. 648: 1934 A I.R 230 (Mad) 149 I C 548

An appeal by the sons in a suit against the father and them on the ground that they are not personally liable for the amount decreed, need be stamped with a court-fee of Rs 10, *Bulaqui Das* v *Lalchand,* 36 P L R 104: 1934 A I R 865 (Lah).

Order 34, Rule 7.—Court-fees ad valorem on the principal amount are to be paid and no court-fees need be paid on surplus which is the result of accounting, *Musst Wajdi Begum* v *Abdul Gani,* 24 N L R 197: 11 N L J 232 113 I C 34 1929 A I R 1

Order 34, Rule 8.—Where, after the preliminary decree in a suit for redemption, the plea of the mortgagor that the decretal amount has been paid off, is overruled and a final decree shall bear *ad valorem* court-fees, *Ashgar Ali* v *Mahabir and another,* 27 O C 225: 84 I C 742. 1925 A I R 102 (Oudh)

Possession of property.—A suit for possession of a house was decreed conditional upon the payment of the value of the improvement On appeal it was held that the value should be on the market value under section 7, para v (e) of the Court Fees Act and (as rules are framed in the Punjab under section 9 of the Suits Valuation Act) the valuation for the purpose of court-fees and for jurisdiction shall be the same, *Abdur Rahaman* v. *Cheragdin,* 19 P R 1908 129 P L R 1908 38 P W R 1908.

A Hindu sued to recover his half share of the ancestral estate from the defendants The suit was decreed conditional upon payment of a sum of money The defendants filed an appeal to get rid of the decree for possession passed against them and did not seek to increase the amount to be paid to them; *held,* t[illegible] appeal is the land itself and as [illegible] t rid of the decree against them, [illegible] the right to recover possession o[illegible] falls under section 7, paragraph v (in various clauses) of the Court Fees Act for the purpose of court-fees and valuation The valuation of the appeal cannot be reduced by the amount, the plaintiff was to pay, *In re Seethayamma,* 48 Mad 652. 47 M.L J 919: 21 L.W. 15: 85 405· 1925 A I R 323 (Mad)

The defendant appellant in a suit for possession of property awarding possession to the plaintiff must value the appeal in

the same way and pay the same court-fees as on the plaint, *Mithomal* v. *Bashomal,* 116 I.C. 110: 1929 A.I.R. 161 (Sind).

Pre-emption.—See under section 7, paragraph vi. Where in an appeal, the appellants ask the Court to reduce the amount payable by them under the decree appealed against, by a certain figure, that sum represents the value of the subject-matter of the appeal and it is upon that sum that they must pay *ad valorem* court-fees as specified in Art. 1, Schedule I of the Court Fees Act, but if the appellants pray that the plaintiff is not entitled to the land in suit, court-fee to be affixed to the memorandum of appeal is to be computed in accordance with the provisions of section 7, paragraph 6 of the Court Fees Act, *Waryam Singh* v. *Mahtab Singh,* 19 Ind. Cas 961 F B.: 240 P.L R. 1913: 141 P.W.R 1913: 76 P.R 1913. Five villages were transferred by means of one sale deed, the consideration set forth in the deed being Rupees 44,000 In respect of this transaction a suit for pre-emption was brought, but the plaintiff alleged that the true consideration was Rupees 2,500 only. As to two of the villages the suit was decreed, on payment of Rupees 21,000 which was found to be proportional part of Rupees 44,000 the value for all the villages; as to the other three villages the suit was dismissed. The plaintiff appealed (a) as to the price to be paid for those two villages in respect of which the decree was in his favour and (b) in respect of the disallowance of his claim to pre-empt the other three villages. A question having arisen as to the proper court-fees payable in this appeal, it was *held,* that the appeal being divisible into two clear and distinct parts, in respect of part (a) the appellant should pay *ad valorem* court-fees on the difference between 21—44 of Rupees 2,500 and Rupees 21,000, while in respect of (b) the appellant should [illegible] to section 7 (vi) of the Court [illegible] Government Revenue of the [illegible] *handra* v *Shekhar Chand,* 40 All 335: 16 All L J 174: 44 Ind Cas 666

Priority—A plaintiff brought a suit to recover money due on a mortgage bond by sale of the mortgaged properties; it was also prayed that as defendant No. 3 had a deed of conditional sale reciting a mortgage prior to the plaintiff's mortgage, the property might be sold subject to defendant No 3's mortgage or that he might be given an opportunity to redeem The suit was decreed and the property was ordered to be sold subject to the mortgage of defendant No. 3. The plaintiff appealed against the latter part of the decree, praying for its modification, "by removing the condition as to priority to the deed of defendant No 3 and its redemption, by the appellate Court." He valued the appeal for the purposes of jurisdiction at Rupees 1,400 the amount of defendant No 3's mortgage, but he paid a court-fee

of rupees ten only for the declaratory relief that defendant No 3's bond had no priority of charge over his own. *Held*, that the relief sought was not declaratory, but sought to obtain an order that the property be sold free of the lien declared by the trial Court; and that, therefore *ad valorem* court-fees must be paid on the value of the lien which it was sought to destroy, *Premsukh Das* v *Shah Gopi Saran*, 4 Pat.L J 323: 51 Ind. Cas 786

A memorandum of appeal by the defendants mortgagees for a declaration that they are prior mortgagees, is to be stamped *ad valorem* on the value of the appellant's interest in the property as they obviously seek to get the property sold subject to the mortgage for which they claim priority, *Kundan Lal* v *Dulichand and others*, 54 All 347: 1932 A L J 45· 140 I C 38: 1932 A I R 221 (All) (See also another case between the same parties reported in 142, I C 770)

In a suit for recovery of certain amount from a company and from certain debenture-holders of that company as also for a declaration that the amount is recoverable in priority over the debentures, the claim for money was decree against the company with a declaration that the amount decree shall have priority over the debentures in favour of defendant No. 7 On appeal by the debenture-holders, it was held as they seek to exonerate the property which is security for their debentures from liability to satisfy the decretal debt, court-fees are payable *ad valorem* on the decretal debt or on the value of their debentures, whichever is less, *A U John* v *Suraj Bhan and others*, 54 All 553. 1932 A L J 385 136 I C 837 1933 A I R 45 (All) 1932 I R 256 (All)

But if a mere declaration in respect of a prior mortgage is sought, then court-fee as on a declaration is to be paid and not *ad valorem* fees on the amount in claim under the prior mortgage, *Iswar Dayal* v *Annasaheb*, 1935 A L J 168 1935 A I R 100 (All) 152 I C 814

Redemption.—See also under section 7, paragraph ix, pages 179 to 182, *supra* In cases of appeals or cross-objections in suits for redemption in which the amount declared by the Court to be due at the date of the decree can be ascertained by reference to the judgment and the decree, it is that amount at which the appeals or the cross objections should be valued and future interest should not be taken into account, *Raghubir Prosad* v *Shankar Baksh Singh*, 36 All 40 17 All L J 1016: 21 Ind Cas 723, modifying *Baldeo Singh* v. *Kalka Prosad*, 35 All 94, where the High Court held that in an appeal from decree for sale on a mortgage which declared that where on the date fixed for payment a specified sum would be found due from the mortgagor, which included interest *pendente lite*, the court-fee is to be paid *ad valorem* on that amount.

Appeal as to the amount payable—Where the mortgagor-appellant appeals on the ground that he is not liable to pay money adjudged to be due to the mortgagee, his memorandum of appeal is to be stamped with a court-fee *ad valorem* on the amount by which he asks the appeal Court to vary the decree, *Mardan Singh* v *Sheoraj Singh*, 30 Ind Cas. 323. In an appeal arising out of a redemption suit, the court-fees payable on the memorandum of appeal is *ad valorem* on the amount by which the mortgage money is sought to be reduced, *Lekh Ram v. Ramji Ram*, 1 Lahore 234 57 Ind. Cas 215: 3 L.L J. 370: 144 P L.R. 1920

Ad valorem court-fees must be paid on the amount by which the mortgage decree in a redemption suit is sought to be reduced, *Ramji Lal* v. *Shibba Ram and others*, 1923 A I.R 309 (Lahore): 75 Ind Cas 667

Where the mortgagee appellant claims a larger amount than that awarded by the decree appealed against court-fees must be paid *ad valorem* on the amount claimed in excess, *Sant Baksh Singh* v *Sheikh Dildar Hossein*, 74 Ind Cas. 88: 1924 A I R. 170 (Oudh); *Sangat Baksh Singh* v *Rawat Dijdeo Baksh Singh*, 67 Ind Cas 968 (1922) A I R 82 (Oudh): 25 O.C 30.

If in an appeal from a decree in a redemption suit a diminution of the amount is prayed, then the memorandum is to be stamped *ad valorem* on that amount, *Hiralal* v *Mulchand*, 31 P L R 173: 122 I C 736: 1930 A I R 601 (Lah.): 193 I.R. 384 (Lah).

If a mortgagee appellant in an appeal from a decree in a redemption suit, contests not only the amount due to him but also whether the transaction is a sale or a mortgage, the court-fees payable by him are to be calculated *ad valorem* upon the principal amount secured by the instrument of mortgage, *Abdul Aziz* v *Rahmat Ullah*, 1933 A I R 155 (Lah.): 148 I.C. 234.

Where in a suit for redemption the trial Court ordered redemption on payment of Rs 39,340-11-7 and the plaintiff having paid that amount together with interest which accrued due later, the trial Court passed a final decree. The plaintiff filed two appeals against the two decrees for reduction of the decretal amount by Rs 32,225-11-7 The High Court held that full court-fees having been paid on the memorandum of appeal against the preliminary decree the memorandum of appeal against the final decree is sufficiently stamped if it bears a court-fee of Rs. 2, *Buddha Ram* v *Niamat Rai and others*, 1923 A.I.R. 632 (Lahore): I.L R. 4 Lahore 406: 6 L L J. 72.

Suit for possession in the alternative for redemption—In such suits if the Court orders that the plaintiff can redeem on payment of a certain sum, the memorandum of appeal is to be

stamped *ad valorem* calculated on that sum, *Mata Badal Singh* v *Jai Singh*, 15 Ind Cas 745, *Wadhawa Singh* v. *Sunder Singh*, 59 Ind Cas 667: 21 P W R. 1921

Appeal against a decree allowing redemption on payment of a certain sum should bear *ad valorem* court-fees on the amount of the principal sum under section 7 (ix) of the Court Fees Act, *Fateh Singh* v. *Babu Ram*, 3 L L J 156

Appeal as to the right to redeem.—In a suit for redemption or foreclosure, where the question arose as to the right to redeem or foreclose for an adjudged sum, the court-fees payable will be according to section 7 (ix), *i e*, according to the principal amount secured by the instrument, but if the appellant challenges the amount payable, the fee will be paid *ad valorem* calculated on the difference between the sum awarded in the lower Court and that mentioned in the memorandum of appeal as due, *Gumani* v *Banwari*, 22 O C 289: 54 Ind. Cas 733. See also *Sangat Baksh Singh* v *Rawat Dijdeo Baksh Singh*, (1922) A I R 82 (Oudh) 25 O C 30: 67 Ind Cas 968.

In a suit to redeem a *kanom*, a decree for redemption was passed The defendants appealed against the decree on the ground that the plaintiffs are not entitled to redeem and if they are held to be so entitled they can do it only on payment of a higher sum, which amount was not stated in the memorandum of appeal and no court-fees paid in respect of the higher amount *Held*, that the memorandum of appeal came under Article 1, Schedule 1 and section 7 (ix) of the Court Fees Act and the memorandum of appeal is to be stamped with a court-fee calculated on the principal amount secured and is the same as that paid on the plaint. In a redemption suit the subject-matter of the suit is the existence of the right to redeem and any question as to the condition of redemption is only incidental to that right, *Sekharam Nair* v *Eacharan Nair*, 6 M L T 245: 20 M L J 120: 3 Ind Cas 459

Where the lower Court decreed the plaintiff's claim for foreclosure not as the amount but only in respect of a quarter of the mortgaged property, the plaintiff filed an appeal regarding the other ¾ of the property which he claimed *Held*, that the memorandum of appeal is to be stamped with a court-fee *ad valorem* calculated on the principal amount secured, *Ghasiram* v *Liladhar*, 9 N.L R. 86: 20 Ind. Cas 257.

Redemption of mortgage by one, not a party to the mortgage.—Where the plaintiff, a Mahomedan lady, sued to redeem a mortgage of her property inherited by her from her father, in spite of the sale of the property by her mother and one of her brothers for their personal debts as their own . and the plaintiff did not claim through the mother or the

held, that the memorandum of appeal is sufficiently stamped with a court-fee of Rs 10, *Musst. Imaman* v. *Lalta Baksh*, 7 N.W.P. 343

Redemption suit—extension of time—Where the appeal relates to the further time granted for redemption after the expiry of the original time granted, the memorandum of appeal need only be stamped with a court-fee of rupees ten only, *Dadnoo* v *Somnath*, 7 N L R 41, overruled partly in 1931 A.I R. 1 (Nag)

Cost of improvements on redemption.—In a suit for redemption of a *kanom*, the plaintiff obtained a decree for possession subject to the payment of the *kanom* amount and the value of the improvements The plaintiff appealed against the award as to the value of the improvements are to be paid on the value of the improvements, *Tiruvangalah Nellyoton Paidal Nayar and others* v *Emperor*, 1926 M W N 169: 92 I C 624: 1926 A I R 225 (Mad) · 22 L W 691

Procedure in case of claim for improvements in a redemption.—When a redemption is allowed and the price of redemption is fixed and an application is made to add to that sum the price of improvement made on the property by the applicant, who is a purchaser of the property without notice of the mortgage, the way to get it done is not by way of review of the appellate judgment in a case in which not a word was said about the matter in either Court. The proper course is to make a demand on the opposite party for one of the alternatives mentioned in sec 51 of the Transfer of Property Act, and if he refuses the demand can be enforced by a suit As for the court-fees on the application for review, the review sought is measured by the value of the improvement made on the property by the applicant and is not a relief of which it is not possible to estimate a money value, *The Sialkot Mission* v *Sir Bisheshardas Daga and others*, 109 I C 95: 1928 A I R 114 (Nag)

Rejection of plaint.—*Duty of Appeal Court*—The plaintiff brought a suit for declaration of title to and recovery of possession of certain immoveable property He valued his suit for the purpose of court-fees at Rs 60 and paid court-fees *ad valorem* on that valuation. The defendant raised a question that the suit has been undervalued and that the court-fee paid was insufficient The trial Court enquired into the matter and found that the true value of the land in suit should be assessed at Rs. 9,905 and gave the plaintiff an opportunity of paying the deficit court-fees The plaintiff defaulted and the result was that the plaint was rejected under Order 7, Rule 11, C. P. C. The plaintiff appealed against that order to the District Judge and valued his appeal at the same value as he put upon the original plaint and questioned the finding of the trial Judge

as to the value of the suit. The learned District Judge disposed of the appeal saying "as the memorandum of appeal is insufficiently stamped it is rejected" On the second appeal the High Court held, it is clear that the District Judge did not go into the question of true value of the properties in suit for the purpose of court-fees and without coming to a finding upon the question he could not hold that the memorandum was insufficiently stamped and remanded the case for a trial of the question as to what the true value of the property in suit is and what the court-fee upon that finding should be, *Amarta Lal Kumar* v *Sisir Kumar Basu*, 87 I.C 651: 1926 A I.R 427 (Calcutta) (*N B.*—In this case the same fee was paid on the memorandum of appeal to the High Court as was paid in the 1st Court)

A memorandum of appeal from a decree rejecting a plaint for non-payment of deficit court-fees which the plaintiff was ordered to pay is not liable to be stamped with *ad valorem* Court fees as the appeal is against the decree and not against the judgment and also as the decree does not contain any directions ordering the plaintiff to make good the deficiency in court-fees, but merely dismisses the plaintiff's suit with costs. The plaintiff is entitled to contest the finding as to court-fees and the fact that no grounds have been added challenging the demand for court-fees is not material, *Jai Protap Narain Singh* v *Rabi Protap Narain Singh*, 52 All 756 1930 A L J 987 124 I C. 708 1930 A I R 443 (All). 1930 I R 504 (All)

Court-fees payable—An appeal against an order rejecting a plaint for non-payment of court-fees must bear *ad valorem* court-fees as the order rejecting the plaint is a decree, *Musst Sado Kuar* v *Buta Singh*, 265 P L R 1914 80 P R 1914 167 P W R 1914, *Shahu* v *Bakri*, 3 L L J 237 See also *Rakhal Chandra Ghose* v *Ashutosh Ghosh*, 17 C W N 807 (808) (Limitation); *Govinda* v *Bansilal*, 98 I C 663 1927 A I R 100 (Nagpore)

An order rejecting a plaint for non-payment of court-fees demanded is a decree and the appellant must pay *ad valorem* court-fees on the value of the subject-matter of the suit and not merely on the further fee demanded in the lower Court, *Harihar Rao* v *Salu Bai and another*, 103 Ind Cas 268. 1927 A I R 256 (Nag)

In *Kossella Koer* v *Beharee Patuk*, (1869) 12 W R 70, it was held by the Calcutta High Court that an appeal from an order rejecting a plaint is an appeal from order and is to be valued and stamped as such, but the words "or from an order rejecting a plaint," in Article II, Schedule II of the Court Fees Act having been repealed by section 155 and Schedule 4 of

the Code of Civil Procedure (Act V of 1908) and an order rejecting a plaint having been included in the definition of a "decree" in the Code of Civil Procedure, this is no longer good law

An order rejecting a plaint is a decree and a memorandum of appeal against the decree must be stamped in the same way as the plaint; and the plaintiff should be given an opportunity to pay the deficit court-fee on the memorandum of appeal, *Munshi Mahton* v *Lachman Lal*, 10 Pat L.T. 545: 120 I.C. 765: 1929 A.I R 615 (Patna).

Specific performance.—Where the plaintiff sued for specific performance of a contract by landlord to grant a lease of some lands at an annual rental of Rs. 32 but the valuation for the purpose for jurisdiction was made at Rs 1,200. *Held*, that the memorandum of second appeal was correctly stamped with fees *ad valorem* calculated on Rs 32 under sec. 7, para (x) (c) of the Court Fees Act and the valuation for the purpose of jurisdiction and court-fees consequently should be Rs. 32, *Sailendra Nath Mitra* v *Ram Chandra Pal*, 25 C W.N. 768: 34 C L J 94· 66 Ind Cas 268

Set-off.—A written statement containing a set-off must be stamped as a plaint in a suit, *Amir Zama* v *Nathu Mal*, 8 All 396 (1886) A W N 159, *Bai Shri Majirajbai* v. *Narotan Horgovan*, 13 Bom 672, *Chenappa* v *Raghunath*, 15 Mad. 29: 1 M L J 598

Ad valorem court-fees are to be paid on the amount claimed as set-off even if that amount exceeds the claim of the plaintiff made in the plaint, *Chhakkan Lal* v. *Kanhaiya Lal*, 45 All 218: 20 All L.J 1005: 69 Ind Cas 921: (1923) A I R 118 (Allahabad), *Budhoo Lal* v *Mewa Lal*, 19 A L J 558 43 All 564: 63 Ind Cas 15 F B

A plea of set-off is quite different from a plea of payment and should not be entertained without payment of proper court-fees in respect of it by the defendant, *Muhammad Raza* v *Kubura Bibi*, 15 Ind Cas 526

Where in a written statement the defendant pleaded a set-off, within the meaning of Article 1, Schedule 1 of the Court Fees Act but omitted to pay the requisite court-fees, the Court can either go into the question of set-off, or make an order for payment of additional court-fees, as no court-fees at all have been paid, *Mathu Emlappa Pillay* v. *Vunuku Thathayya Maistry*, 36 Ind. Cas. 957.

When a set-off is pleaded, court-fee is payable only on the amount claimed in excess of that claimed in the plaint by the plaintiff and only if the defendant wants a decree for that excess, *Ramnagir* v *Achheram*, 1927 A I.R 74 (Nagpore): 97 I.C. 916.

Equitable set-off.

In *T S. Sitarama Aiyar* v. *G. Ramaniya Mudaliar,* 1933 A.I.R. 203 (M): 142 I.C. 719 the Madras High Court held "there is nothing to show that the set-off mentioned in this article is confined only to legal set-off coming under Order 8, Rule 6, C P. C. *Prima facie* the expression 'set-off' used in this article may well night include an equitable set-off" Therefore, a claim by way of damages in the written statement in a suit on a pro-note is liable to duty. See *Lakshmanan Chettiar* v. *Ramanathan Chettiar,* 58 Mad 338. 68 M L J. 23: 1935 M W N 24: 41 L W 27: 1935 A I.R 115 (Mad) 154 I C 432

Set-off and counter claim

The words 'set-off' and 'counter claim' are not defined in the Court Fees Act but they have a definite meaning attached to them They refer to a cross claim against the plaintiff which entitles the defendant to refuse to pay the amount demanded by the plaintiff and to assert that the result of setting off the cross claim of the defendant would be that the defendant would on the contrary be entitled to a decree for the balance, *Wali Mahomed* v *Khoja Ismailia Trading Co*, 1933 A I R 247 (Sind) · 150 I C 464

What is a set-off?—See Order 8, Rules 6 and 7, C P C See *Mahesh Narain* v *Newbat Patuk,* 32 Cal 654. 1 C L J 364, where it was held that for certain purposes the set-off has the same effect as a plaint in a cross suit See also *Guise* v *Ananta Ram,* 10 C W N 199, *Bhagatsingh* v *Debi Dyal,* 85 P R 1908 130 P L R 1908 80 P W R 1908, where it was held that if the claim be not an asecrtained amount and the defendant does not ask for a decree but merely claims that he is entitled to get certain sums arising out of the same transaction and that his claim may be set-off against the claim of the plaintiff, such claim does not require court-fee See *contra, Fakir Chandra* v *Gisborne & Co*, 8 C W N 175, *Subramania* v *Authuswami,* 17 M L J 481

What is not a set-off?—In a suit for account and to recover the amount found due on taking unsettled accounts in a dissolved partnership, the defendants claimed that some money to be ascertained on taking accounts, is due from the plaintiff to them and prayed that they might get that amount, expressing their willingness to pay court-fee on any sum awarded to them *Held,* that the defendant's claim is neither a set-off nor a counter claim, so is not liable to pay court-fee under Art 1, Schedule 1 of the Court Fees Act and the defendants cannot be compelled to value their claim or to pay court-fees under section 7 (iv) (f) of the Court Fees Act, *Fateh Mahomed Haji Sulleman* v. *K S Ramjan Khan,* 8 S L R 122. 27 Ind Cas 316

In a suit for accounts in a dissolved partnership business

the plaintiff sued to recover the money due to the plaintiff; the defendant pleaded that money will be found due to him, *held*, that no court-fee is payable as the defendant's claim is not a counter-claim but merely a statement that something is likely to happen if accounts are taken, *Jessoram Dhanuram* v. *Isardas*, 8 S L R 124: 27 Ind. Cas. 320.

In a contribution suit if the defendant claim that the previous payments by him should be taken into consideration, such sums are not strictly speaking a matter of set-off, *Gogun Chand* v *Hurimohun*, 12 C L R. 539.

Under section 108 (f) of the Transfer of Property Act, the deduction the lessee is authorized to make for the expenses of repairs from the rent as it becomes due, is in the nature of payments to the landlord and does not bear the character of a set-off, *Katie Graham* v. *Colonial Govt. of British Guinea*, 12 C L J 351.

Valuation of a set-off—There is no reason why the provisions of the Court Fees Act should not apply to the Valuation of the set-off for the purposes of court-fees, *D. S. Abraham & Co* v *Ebrahim*, 1925 A I R 65 (R): 84 I C 971: 2 Ran. 462

Assessment of fees

The court-fees are payable on the whole amount claimed and not on the difference between the set-off and the amount claimed in the plaint, *Chakkan Lal* v *Kanhaiya Lal*, 45 All 218: 69 I C 9211 1923 A I R 118 (All); *Jugal Kishore* v. *Bankey Behari*, (1934) 16 P L T. 76: 1935 A I R 110 (Pat).

Counter-claim.—If the defendant do not put forward any counter-claim but is making various claim as to items in the partition account to be taken in the suit, then he cannot be asked to pay court-fees on those items, *Balgis Beevi Ammal* v. *Hathiya Beevi Ammal*, 1933 A I R 353 (Mad): 147 I C 300

Garnishee.—The equity arising from the cross debt could be set-off by the defendant without payment of court-fees, *Tayabali Gulam Hossein* v *Atmaram Sakharam Vani*, 16 Bom L R 520· 38 Bom. 631.

Proviso.—Maximum court-fee leviable on plaints, and memorandum of appeal, is Rs 3,000 under this proviso, *Kashi Prasad Singh* v. *Secretary of State for India*, 29 Cal 140 The rule laid down in section 17 of the Court Fees Act regarding multifarious suits is subject to the proviso at the end of Art 1, Schedule 1 of that Act, and the maximum fee leviable on the plaint or memorandum of appeal in such a suit is under that proviso Rs 3,000, *Raghobir Singh* v *Dharam Kuar*, 3 All 108 F B The Court Fees Act does not authorize the recovery of any sum by way of court-fees in excess of Rs 3,000 The proviso to Art 1 of Sch I refers only to the maximum fee leviable on a plaint or a memorandum of appeal, and leaves out any

reference to a written statement pleading a set off or counter-claim, but there is nothing in the Act to suggest that there is any fee in excess of Rs. 3,000 and there is no authority for charging a larger sum on a written statement than that fixed as maximum in Schedule I which is simply headed as *'ad valorem fees'* and the table of reference applies to the whole schedule and not in particular to Article 1 which is the only article which makes any proviso indicating that there is a different maximum for the fees leviable on a plaint or memorandum of appeal from those leviable on a written statement There is no reason for confining the words of the proviso to a plaint or a memorandum of appeal but the words may apply equally to a written statement claiming a set-off, (*Raja*) *Mahomed Mumtaz Ali* v *Muhammad Saadat Ali*, 5 Luck 621: 7 O W N. 147 125 I.C. 172: 1930 A I R 140 (Oudh): 1930 I.R 300 (Oudh)

2 Plaint * * * in a suit for possession under [the Specific Relief Act, 1877, section 9]	A fee of one-half the amount prescribed in the foregoing scale

NOTES

Amendments.—The words "Specific Relief Act, 1877, section 9" were substituted for the words and figures "Act No XIV of 1859 [An Act to *provide for the limitation of suits* by the Repealing and Amending Act, 1891 (12 of 1891)] The words "or the memorandum of appeal" after the word "plaint" were repealed by the Court Fees Amendment Act, 1870 (Act 20 of 1870)

3 [*Repealed by Act VIII of* 1871]	
4 Application for review of judgment, if presented on or after the ninetieth day from the date of the decree	The fee leviable on the plaint or memorandum of appeal
5 Application for review of judgment, if presented before the ninetieth day from the date of the decree	One-half of the fee leviable on the plaint or memorandum of appeal.

NOTES

Application.—Neither Art 4 nor Art 5 of Schedule I of the Court Fees Act refers to an interlocutory order; it is clear from the language of these articles that they refer to orders ending in decrees, *Jagannath Prosad* v *Mulchand*, 31 All. 261: 6 All L J 151 · 1 Ind Cas 999 See also *DeSouza* v. *The Secretary of State for India*, 1892 P J 383 For other cases see under sections 14 and 15 of this Act, *supra*

Application for new trial—The application for review does not include new trial application in a Small Cause Court suit in the muffasil, *Gopinath Ray* v. *Ram Joy*, 14 W.R. 249 See also *Chotelal* v *Bulakidas*, 7 Bom H C.R. 109.

Application under section 151, C. P. C.—No application, far less any with court-fees as on an application for review need be filed under section 151, C. P. C, *Probhas Kumar Ganguli* v. *Nithar Lal Ganguli*, 28 C.W.N 928 · 1924 A.I.R. 1054 (Cal.).

Leviable.—The word "leviable" seems to have been used instead of the word "levied" in order to provide, for an application for review by a defendant or respondent in the case of a suit in *forma pauperis, In the matter of Maqbul Ahmed*, 31 All 294 (300) : 6 All.L.J. 215: 1 Ind. Cas. 209.

The words "leviable on a plaint or memorandum of appeal" in Art 5 of the Court Fees Act mean "leviable on the plaint or memorandum of appeal" in which the judgment, review of which is asked for, was passed and cannot be construed to mean "leviable on a plaint or memorandum of appeal" asking for the same relief as that asked for in the application for review. Application for review must, therefore, bear court-fees without reference to the relief asked for in the application for review, *Nageshar Sahai* v. *Shiam Bahadur*, 74 Ind Cas 255: 1924 A.I.R 108 (Oudh): 11 O.L J. 339.

The word "leviable" in Arts 4 and 5 has reference to the time when the plaint or memorandum of appeal was presented As the application relates back to the plaint or memorandum of appeal, as the case may be, the fee is levied in a fixed proportion independent of the scope of the application for review, *Nanhilal Agrani* v *Jogendra Chandra Dutta*, 28 C W.N. 403 39 C L J 222 (225, 226, 227): 82 I C 297: 1924 A.I R. 881 (Cal) The High Court heard an application for review on half court-fees, although the time had expired and held that the payment of full court-fees and then an immediate order for return of half is an idle formality, *Nowrang* v *Janardan*, 39 C.L J 344: 80 I C. 794: 1924 A I.R. 994 (Cal)

The word 'leviable' does not mean 'levied', *A A R. Chettyar Firm* v. *Daw Htoo and others*, 11 Rang. 120: 146 I.C 560: 1933 A I.R. 203 (Rang.).

Plaint.—The word 'plaint' in the 3rd column means nothing else than the plaint which was actually filed and which has resulted in the judgment which is sought to be reviewed. It does not mean an imaginary plaint which might be filed at the time of the filing of the application for review and asking for the same relief as in the application for review. Therefore half the court-fees originally paid on the original plaint, are to be

paid even if the application for review relates to a small portion of the relief asked for in the plaint, *Satya Kripal Bannerjee* v *Satya Bikash Bannerjee*, 57 Cal 679: 129 I C 191. 1930 A I.R 631 (Cal.): 1931 I R 143 (Cal) followed in *Ibrahim Ali* v. *Ahsan Hussain and others*, 142 I C. 416 (Nag): 1933 A I.R 207 (Nag): 1933 I R 118 (Nag.).

Date of the Decree.—See Order 20, Rule 7, C P. C. The decree shall bear the date when the judgment was pronounced, etc. See *Nowrang* v *Janardan*, (1923) 39 C L J. 344· 80 I C 794. 1924 A I R 994 (Cal)

Computation of time.—Sundays and holidays are not to be excluded in computing the time of 90 days, *Sayera Bibi* v *Bhutnath Haldar*, 15 C L J 505 15 Ind Cas 455. *In re Kota*, 9 Mad 134

The time for presenting an application is 90 days from the date of signing the decree although no copy is required to be filed and the time for obtaining the copy is to be excluded, *Gangadhar* v *Shekhar Bashini*, 20 C W N 967 24 C.L J 235; *Kalipada* v *Sekhar*, 35 I C 348

Time for copying [illegible] of 89 days, *Jugat Pal* [illegible] 302, *Ruldu Mal* v *S*[illegible] *Zemindary & Co* v *Dayarda Nath Bhowmick*, 96 I C 437. *See for other cases under section 14 of this Act* Application for review filed after 90 days must bear full court-fees, *Hari Lal Ram Dhan* v *Mussammut Gaivabai*, 7 C P L R 111

Presentation—The presentation to the Stamp Reporter was presentation within the meaning of Arts 4 and 5 of Sch I to the Court Fees Act, *Nowrang* v *Janardan*, 39 C L J 344: 1924 A I.R 994 (Cal) 80 I C 794

Review [illegible] **Court-fee payable**—For the purpose of ascertaini[illegible] Art 5, Schedule I of the Court [illegible] review an appellate judgment, the fee to be considered is the fee leviable on the memorandum of the appeal in which the decree sought to be reviewed was passed, and not the fee which was leviable on the plaint, nor when the decree sought to be reviewed was passed on appeal under section 10 of the Letters Patent from an appellate judgment of a Division Bench, nor the fee which was leviable on the memorandum of the appeal before such Bench, *Husaini Begum* v *The Collector of Muzaffarnagor*, 15 All 176. 9 All W N 27

The dismissal of an appeal under Order 41, Rule 11, C P. C. by the High Court is a decree and falls within the definition of a decree in section 2 (2), C. P. C. Court-fee is payable under

Art 4 of Schedule I of the Court Fees Act on all documents *irrespective of the schedules of the Court Fees Act* in which such a document may be included, *Altaf Ali v. Jamsur Ali*, 30 C W N 334 · 93 I C 909: 1926 A.I.R. 638 (Cal.).

Fee payable after amendments—If after the memorandum of appeal has been filed, the Court Fees Act was amended which required enhanced fees, the court-fees on an application for review of judgment in that appeal, filed after the amendment has come into force, are to be assessed at the old rate before the amendments *Nanhilal Agram v. J C Dutt and others*, 28 C.W.N. 403 39 C L J 222 82 I C 297: 1924 A.I.R. 881 (Cal.).

But *In re Punya Nahako and others*, 50 Mad 488: 52 M L J 128. 100 I C 72: 1927 A.I R. 360 (Mad.) the Madras High Court held that when the application for review is filed after the amended Act has come into operation, then the court-fees should be calculated as if the application for review was a plaint or a memorandum of appeal for the relief sought for and presented on that date.

An application for review is to be stamped with half the fee (when within 90 days from the date of judgment) payable on the memorandum of appeal at the time the appeal was filed. although the scale of fees may have increased when the application for review was presented. *Parmeshwar Kurmi v. Bakhtawar Pande*, 54 All 1092 1932 A L J 908: 1933 A.I.R. 20 (All): 143 I.C 481

Application for review of one claim out of several.—Where a plaint or memorandum of appeal comprises a number of claims and a portion only of such claims has been allowed by the judgment, the party asking a review should be required to stamp his application with a fee sufficient to cover the amount of the claims in regard to which l ... es the Court to review its judgment on the ground th ... or memorandum appeal embracing two or more ... jects is treated. the purpose of stamp revenue a ... of distinct plai or memoranda of appeal, and tr ... manner, I ti the words "the plaint or mem ... ppeal in Art 5 may be construed as meaning, ... , the plaint memorandum of ... formed ... ion of sev subjects compri ... the pl ... dum of which would b ... sente ... the subject, in rega ... the re ... if embraced that ... no *Tambekar*, 4 1 ... als App 1. The c ... on would be the co ... as review applicatio ... a

or memorandum of appeal for the same relief. The court-fees payable on an application for review in a case of award for mesne profits are to be calculated on the amount of mesne profits which the applicant seems to be relieved from payment, *In re Punya Nahako and others*, 50 Mad 488: 52 M L J 128: 1927 M W N 101: 100 I C 72 1927 A I R 360 (Mad) See also *A. A R Chettyar Firm* v *Daw Htoo and others*, 11 Rang 120 1933 A I R 203 (Rang) 146 I C 560

Contra—The court-fee payable must be calculated on that paid on the plaint or memorandum of appeal in which the judgment sought to be reviewed was passed whether the question relates to whole or part of a decree, *In the matter of Sheikh Maqbul Ahmed*, 31 All 294 6 All L J 215: 1 Ind Cas 209, *Imdad Hasan Khan* v *Badri Prasad*, 1898 All W N. 212, *Nageshar Sahai* v *Shiam Bahadur*, 1924 A I R 108 (Oudh): 11 O L J 339 74 Ind Cas 255, *Nanhilal* v. *Jogendra Chandra*, 28 C W N 403. 39 C L J 222 (227): 82 I C 207. 1924 A I R 881 (Cal), *Sheikh Abdul Gani* v *Sito Singh*, 6 P L T 40: 56 I C. 143: 1925 A I R 368 (Pat) where the appellant gave up on of the reliefs asked for in argument

Applications for reviews of judgments are to be stamped with court-fees actually leviable on the memoranda of appeal in which the judgment sought to be reviewed was passed *irrespective* of the relief claimed, *Musst Hussaina* v *Musst Sahib Nur*, 59 P W R 1913 154 P L R 1913 20 Ind Cas 3

The application for review is to be stamped on the entire valuation of the suit and not merely on the value of the relief sought for in the review The policy of the Legislature is to put a clog on the possible *mala fide* application for review, *Satya Kripal Bannerjee* v *Satya Bikash Bannerjee*, 129 I C. 191. 1930 A I R 631 (Cal) 1931 I R 143 (Cal) 57 Cal 679.

Review as to mesne profits—See *In re Punya Nahako and others*, 50 Mad 488 52 M L J 128 1927 M W N 101: 100 I C 72· 1927 A I R 360 (Mad) (This view cannot be accepted by other High Courts except Bombay as expressed in cases cited above)

Review as to costs—A suit being decided in favour of the plaintiff, one of the defendants filed an application for review as to costs only and stamped his petition of review on the entire amount of costs The Munsiff ordered that stamp on the entire value of the suit should be paid and on the failure of the petitioner to comply with the order, rejected the petition The petitioner moved the High Court, *held*, that the decision of the Munsiff was right, *Nobinchandra Chuckerbuty* v. *Mohamed Uzir Ali Sarkar*, 3 C W N 292 *Contra*, see *A A R Chettyar Firm* v *Daw Htoo and others*, 11 Rang. 120: 1933 A.I.R. 203

(Rang): 146 I C. 560 where it was held that the application need only bear stamps as to costs only.

Restoration of an appeal dismissed for default.—An application for restoration of an appeal dismissed for non-payment of paper-book costs, is not an application for review, therefore is to be stamped as an application under Sch II, Art 1 (d), *Nalini Sundari Debya* v *Narendra Chandra Lahiri*, 36 C W N 246 141 I C 305 1932 A I R 641 (Cal.). See also *Hari Dassi Debi* v *Sajani Mohan Sanyal*, 36 C.W.N. 564: 55 C L J 314. 1932 A I R 770 (Cal.).

Fraudulent petition.—*Application for review filed to set aside fraudulent solenama*—Where an application was field to set aside an order passed on a fraudulent vakalatnama and a frudulent petition of compromise, the High Court held that in such case, the Court had an inherent jurisdiction summarily to set aside the order passed and as such, no court-fees as on an application for review, is necessary, *Peary Chowdhury* v. *Sanoo Das*, 19 C W N 419· 27 I C 628

Fraud as to terms in the compromise—In *J. C Gaulstaun* v *Kumar Pramatha Nath Ray*, 33 C W N 883, the Calcutta High Court held that *ad valorem* court-fees are necessary in an application for review on the ground of fraud by insertion of the word "whole" in place of the word "balance"

Petition insufficiently stamped.—*Information to be given to the party*—The applicant must be informed of the deficiency in court-fees on the application If it is not in form he cannot be refused permission at the time of hearing to make up the deficiency, *In re Shahazada Fakeeroddeen Ahmed*, 15 W.R. 278

Hearing of an insufficiently stamped application—A Court has jurisdiction to hear an application for review even if the application be insufficiently stamped, *Surendranath* v *Sitanath*, 21 I.C. 943 (Cal).

6 Copy or translation of a judgment or order not being, or having the force of, a decree.	When such judgment or order is passed by any Civil Court other than a High Court, or by the presiding officer of any Revenue Court or Office or by any other Judicial or Executive Authority.	
	(*a*)—If the amount or value of the subject-matter is fifty or less than fifty rupees	Four annas (*Six annas in Bengal, Bihar and Orissa, C. P., Madras and U P*)
	(*b*)—If such amount or value exceeds fifty rupees.	Eight annas (*Twelve annas in Bengal, Bihar and*

	Orissa, C P., Madras and U. P.)
When such judgment or order is passed by a High Court.	One rupee. (*One rupee eight annas in Bengal, Bihar and Orissa, Madras and U. P.)*

NOTES.

Amendment.—This Article has been amended in Bengal, Madras, Bihar and Orissa and U. P. A new Article 6A has been enacted in Madras.

Copy or translation of, etc —Where portions of khata books are translated, each portion translated is treated as a separate document, and a portion less than a folio is to be charged as a whole folio The portions are not to be added together and charged according to the folios that they then may comprise, *Brojonath Dhur* v *Bhabo Mohan Dhar*, 6 B L R App 137.

7 Copy of a decree or order having the force of a decree	When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—	
	(*a*)—If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees	Eight annas (*Twelve annas in Bihar and Orissa, U. P and C. P*)
	(*b*)—if such amount or value exceeds fifty rupees	One rupee (*One rupee and eight annas in Bihar and Orissa and U P*)
	When such decree or order is made by a High Court	Four rupees. (*Six rupees in Bihar and Orissa*)

NOTES

Local Amendment.—This Article has been amended in Bihar and Oriss, U P and C P

Order having the force of a decree.—See section 2 of the Code of Civil Procedure (Act V of 1908)

Notes of judgment.—Notes of judgment furnished to the parties under the Rules for the guidance of Small Cause Courts are copies of decrees which should be stamped under this Article, *Anonymous*, 6 M H C App 23.

If an appeal be filed with a copy of a decree insufficiently stamped and the memorandum of appeal is returned on that

account and is refiled properly stamped after the period of limitation, then the appeal becomes time barred, *Mohammad Fazl Elahi* v. *Ram Lal,* 152 I C. 64: 1935 A.I.R. 124 (Lah.). See also *Imam Din* v *Sahib Din,* 35 P.L R. 142: 147 I.C. 343: 1934 A I R. 810 (Lah).

8. Copy of any document liable to stamp-duty under the Indian Stamp Act, 1879 (*1899—in Bengal and Bombay*) when left by any party to a suit or proceeding in place of the original withdrawn—	(*a*)—When the Stamp-duty chargeable on the original does not exceed eight annas (*one rupee—in Bombay*).	The amount of the duty chargeable on the original. (*One and a half times the amount of the duty chargeable on the original in Bihar and Orissa.*)
	(*b*) In any other case.	Eight annas. (*Twelve annas in Bihar and Orissa and U. P*) *and one rupee in Bombay.*)

NOTES

Local Amendment.—This Article has been amended in Bengal, Bombay, Bihar and Orissa and U P

The Indian Stamp Act now in force is Act II of 1899. Act I of 1879 has been repealed

See now the Indian Stamp Act, 1899 (2 of 1899), section 42 Copies of entries from account books relied on by the plaintiff are kept with the record when such account books are returned to him under section 141 (Order 13, Rule 4) of the Code of Civil Procedure. When so furnished they are not certified "by or by order of any public officer" and are not stamped but the question having arisen when the Court clerk subsequently certified the copies as to their having been compared and found correct, *held,* that the originals not having been chargeable under the Stamp Act, no court-fees can be levied by reason of the certificate, *Hari Chand* v *Jivna Subhana,* 11 Bom. 526

A copy or an extract from an entry in an account book filed under section 141A, C. P. C. (Act XIV of 1882) does not require to be stamped under Art. 24, Sch I of the Stamp Act, *Kastur* v. *Fakiria,* 26 Bom 522: 4 Bom L R. 223; see also *Nandu Bai* v. *Gou,* 27 Bom. 150: 4 Bom L R 591

Article 8 of Schedule I of the Court Fees Act is intended to authorize the levy of a fee of 8 annas only in cases where the original which is withdrawn, is liable to stamp duty Where a document which is not required by law to be placed on the record is presented for verification and then returned to the holder, it cannot be said to be "withdrawn" within the meaning of Article 8, Schedule I of the Court Fees Act. Where,

therefore, the plaintiff instituted a suit through his agent who held a general power of attorney duly stamped, which power of attorney having been produced for verification, an unstamped copy was filed and left on the record *Held*, that the copy was not chargeable with any fee inasmuch as the original power of attorney was never placed on the record and there is no law which required that it should be so placed Article 8 of Schedule I of the Court Fees Act is intended to authorize the levy of a fee of 8 annas in the case contemplated by Order 13, Rule 9, C P C If in such case the original is liable to stamp duty, the copy substituted is chargeable with a fee of 8 annas, *Rustomji* v *Kala Singh*, 136 P W R 1917: 9 P R 1918: 43 Ind Cas 383

Method of counting folios—Where portions of a *khata* book are to be translated, the method is to calculate each portion as a separate document, even if any of the portions is less than a folio The separate portions are not to be taken together and charged according to the aggregate number of folios, *Brajanath Dhar* v *Bhaboo Mohan Dhar*, 6 B.L R App 137

Stamp Act.—Provisions of the Indian Stamp Act (Act II of 1899) relating to copies is embodied in Art 24 of the said Act

As to documents liable to duty under the Indian Stamp Act (Act II of 1899), see s 3 and the Schedule to that Act

9 Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report, or of the like taken out of any Civil or Criminal or Revenue Court or Office, or from the office of any chief officer charged with the executive administration of a Division—	For every three hundred and sixty words or fraction of three hundred and sixty words	Eight annas *(Twelve annas in Bihar and Orissa)*

NOTES

Local Amendments.—This Article has been amended in Bihar and Orissa

Several documents—*See Brajonath Dhar* v *Bhaba Mohan Dhar*, 6 B L R App. 137, *supra*

Copies.—Certified copies of maps or plans or extracts of Baptismal, Marriage and Burial certificates and certified copies under Birth, Death and Registration Acts are to be stamped with 8 annas adhesive court-fees stamp, under Notification No 786 S R, dated 17th February, 1899, Rule 15 (e).

These documents are to be stamped under the Indian Stamp Act (Act II of 1899) and rules under that Act.

Under Art 24 of Schedule I of the Stamp Act (Act II of 1899), copy of or extract from any register relating to births, baptisms, namings, dedications, marriages, [divorces, deaths or burials] is exempted from duty [These documents were not exempted from duty under Act I of 1879.]

Under the Indian Stamp Act Rules, 1925, dated 5th May, 1925, Rule 17 (e), copies of maps or plans and printed copies certified to be true copies shall be stamped with court-fee stamps. This was also the kind of stamp leviable under the rules framed in 1914

Copies from Revenue Courts.—*Copies of surveyor's village plans*—N 9628 Mis C, dated 1st October, 1923.—In supersession of all previous orders on the subject the Governor in Council is pleased to direct that the ordinary rate of supply of copies of surveyor's village plans from the Revenue Court in Bengal is to be one rupee and six annas per plan, with effect from the 26th October, 1923, but should the internal delineation be intricate and the labour be enhanced in proportion, the rate may be increased at the discretion of the collector, within a limit of two rupees and 12 annas per plan (*Vide the Calcutta Gazette,* Part I, p *1461*)

Searching fees.—A sub-collector required searching fees to be paid in conection with an application for copies by parties, held on the application for revision by the High Court, there is no provision of law, and there is nothing in the civil rules of practice or in any rule which governs the procedure in a Civil Court, authorizing the levy of searching fees for supplying copies to litigants When an application is made all that is required of a party is that such a party is to supply stamps for copies and if the required number of copy stamps are supplied, it is the duty of the Court to furnish the copies asked for, *Raja Sahib of Vizianagram* v *Sub-Collector of Berhampore,* 1928 A.I R 370 (Madras) 54 M L J. 229: 51 Mad 599: 27 L W. 310: 1928 M W.N. 102: 108 I.C. 656.

N B—Such fees may be levied when there are rules to that effect

10 [*Repealed by the Guardians and Wards Act* (*VIII of 1890*). Sec. 2]

11. Probate of a will or letters of administration with or without will annexed	When such amount or value of the property in respect of which the grant of probate, or letters is made, exceeds one thousand rupees (*two thousand*	Two per centum on such amount or value *In all places where the rates have not been changed.* (*In Punjab the rate is two per centum only*)

—in Bengal) but does not exceed ten thousand rupees (*five thousand—in C P and Madras*)	
(*When such amount or value exceeds five thousand rupees—in Madras*)	(*Three per centum on such amount or value —in Madras*)
(*When such amount or value exceeds five thousand rupees but does not exceed ten thousand rupees —in C. P.*)	(*One hundred rupees plus two and a half per centum on the excess of five thousand rupees—in C P*)
When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees,	Two and a half per centum on such amount or value
(*on the part of the amount or value in excess of ten thousand rupees upto fifty thousand rupees--in Bombay*)	(*Three per centum in Bengal, Bihar and Orissa and Bombay*)
(*When such amount or value exceeds ten thousand rupees—in C P*)	(*Two hundred and fifty rupees plus three per centum on the amount or value in excess of ten thousand rupees—in C P*)
When such amount or value exceeds fifty thousand rupees	Three per centum on such amount or value
(*When such amount or value exceeds fifty thousand rupees, for the portion of such amount or value which is in excess of fifty thousand rupees upto one lakh of rupees*)	(*Three per centum in U P but four per centum in Bengal, Bihar and Orissa, and Bombay*)
When such amount or value exceeds a lakh of rupees, on the portion of such amount or value which is in excess of one lakh of rupees	*Four per centum in U P, Five per centum in B & O*
(*When such amount or value exceeds a lakh of rupees on the portion of such amount or value which is in excess of one lakh of rupees upto two lakhs and fifty thousand—in Bengal*)	*Five per centum in Bengal*

(When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one lakh of rupees, on the part of the amount or value in excess of one lakh of rupees, upto two lakhs of rupees—in Bombay)	*Four and a half per centum—in Bombay.*
(When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two lakhs of rupees, on the part of the amount or value in excess of two lakhs of rupees, upto two lakhs and fifty thousand—in Bombay)	*Five per centum—in Bombay.*
When such amount or value exceeds two lakhs and fifty thousand rupees, on the portion of such amount or value which is in excess of two lakhs and fifty thousand rupees upto three lakhs of rupees	*Five and a half per centum—in Bengal and Bombay.*
(and) when such amount or value exceeds three lakhs of rupees, on the portion of such amount or value which is in excess of three lakhs of rupees upto four lakhs of rupees	*Six per centum (Bengal and Bombay).*
(and) when such amount or value exceeds four lakhs of rubecs, on the portion of such amount or value which is in excess of four lakhs of rupees upto five lakhs of rupees	*Six and a half per centum (Bengal and Bombay).*
(and) when such amount or value exceeds five lakhs of rupees, on the portion of such amount or value which is in excess of five lakhs of rupees	*Seven per centum (Bengal and Bombay)*

Provided that when, after the grant of a certificate under the Succession Certificate Act, 1889 (*Part X of the Indian Succession Act, 1925,—in Bombay, Bengal and C P*) or under Bombay Regulation VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant

NOTES

Local Amendment.—This Article has been amended in Bengal, Bombay, Bihar and Orissa, Madras, C P and U P.

For the amendment of rates see the Amending Acts for each Province, infra (I have attempted to indicate the changes in one place but the particular statute for each province must be consulted)

Application.—Art 11 applies only to those cases when the duty is payable on the amount or value of the property in respect of which Probate or Letters of Administration shall be granted, if the amount or value of such property exceeds Rs 1,000 (by the present Amendment Act, Rs 2,000 in Bengal) *In the goods of Abdul Aziz*, 33 Cal 577

Valuation.—In cases not governed by the Indian Succession Act, Probate and Letters of Administration granted by the High Court of Bombay in respect of Hindus, Mahomedans and others not usually designated as British subjects take effect only for the purpose of recovering debts and securing debtors paying the same and probate duty is payable on the amount of such debts Cutchi Memons are Mahomedans *In the matter of the last will and testament of Haji Ismail Haji Abdulla, deceased*, 6 Bombay 452

The words "amount or value of the property" in Article 11, Schedule 1 of the Court Fees Act refer only to the nett value Therefore, when the nett value of a property in respect of which Probate or Letters of Administration are granted does not exceed Rs 1 000 the Probate or Letters of Administration are not

chargeable with any fees. When the meaning of the legislative enactment is not clear, the benefit of the doubt must be in favour of the subject. *In re Chin Ah Yaing*, 7 Bur L R. 359: 7 Bur L T 275: 24 Ind Cas. 823.

In *Satpal Ram* v. *Collector of Multan*, (1931) 12 Lahore 584: 32 P L R 393 1931 A I R 310 (Lah.): 135 I.C. 60, the executor in his application for probate stated the value of the entire estate likely to come into his hands at Rs. 8,000 but on opposition being offered compromised the case with the opponents and valued the estate at Rs 3,270 being the sum he will be entitled to recover The executor then offered to pay court-fees on Rs 3,270 only. The Lahore High Court held that the intention of the Legislature was to lay down a general rule that grant of probate should be made for the whole estate of a deceased person, although in certain circumstances the Court would be justified in limiting the grant to a specific portion of the estate Although the other executors named in the will have realized a portion of the assets of the testator, the executor who applies for probate would on being granted the probate of the will would be entitled to deal with the whole of the estate and the mere fact that he has allowed other persons to retain and administer money recovered by them before the grant would not entitle him to evade the duty (Court-fees on the entitre value as at first submitted was ordered to be paid.) The High Court proceeded to draw a distinction between issue of letters of administration in the case of an instestacy and the case of a probate of a will or grant of letters of administration with a copy of the will annexed. In the former case the deceased having died intestate, his estate has to be distributed by an administrator in accordance with such rules as may apply to the particular individual In other cases the estate has to be distributed in accordance with the wishes of the deceased contained in the will

Letters of Administration—In *In re Ramchand Seal*, 5 Cal 2: 4 C.L R. 290, it was held that letters of administration to the estate of a Hindu should issue for the whole estate See also *In re Grish Chunder Mitter*, 6 Cal 483: 7 C.L R. 593; *Suttya Krishna Ghosal*, 10 Cal. 554; *Moosa* v. *Isa*, 8 Bom 241: *Framji* v. *Adarji*, 18 Bom 337, but in *Gurbachan* v. *Satwant*, 1925 A.I.R. 493 (Lah): 26 P L R 608: 90 I C. 620: 7 L L J. 228, it was held that letters of administration for a portion of the estate can be granted and court-fees for that only need be paid See also *other cases collected under s. 19C, supra.*

In cases governed by the Indian Succession Act—"Value" means the nett value and court-fees are to be paid on the nett value, *In re Catherine Thaddeus*, 7 Bur L T. 272: 7 L B.R 256: 24 Ind Cas 793; *In the goods of Mrs F. E. W. Meik*, 40 All.

279: 46 Ind. Cas. 865; *In the goods of Harriet Teviot Kerr*, 18 C.W.N. 121: 18 C.L.J. 308: 21 Ind Cas 502

In case of a chose in action—Art. 11 applies only to those cases where the duty is payable on the amount or value of the property in respect of which Probate or Letters of Administra, tion, shall be granted, if the amount or value of such property exceeds Rs 1,000 but if the right to any such property is subject to any litigation, it is permissible to declare the valuation of that property as not exceeding Rs 1,000 as the case is not provided for in the Act, *In the goods of Abdul Aziz*, 23 Cal 577 See also *Saldanha* v *The Secretary of State for India in Council*, 24 Mad 241 where it was further held that in such a case the revenue is protected under s 19E of the Court Fees Act

Judgment debt—The executor may put a fair valuation upon a judgment-debt which forms a part of the estate of the testator having regard to the chance for recovery of the same If the Revenue Authority is not satisfied with the estimated valuation, then he can deal with the matter under s 19H of the Court Fees Act, *In re Rudibai Rupji Sunderji*, 55 Bom 844· 33 Bom L R 864: 134 I C 729 1931 A I R 419 (Bom) 1931 I.R 537 (Bom)

Letters of Administration granted to widow—Where Letters of Administration to the estate of a deceased Burman are granted to his widow, the latter has only to pay court-fees on what she takes as administratrix, *viz*, what was her husband's share, *In the estate of U Po Thin*, 11 Bur L T 258· 50 Ind Cas 545

Exercise of power of appointment—By his will A directed that Rs 7,000 out of his property should be lent out at interest, that the interest derived from time to time should be added to the principal amount and that the amount so accruing should be paid to whoever B, his wife, by her will, should appoint A died, and his will was proved, probate duty being paid on the principal amount of Rs 7,000 B executed a will in which she exercised the power of appointment and then died, her executor now applied for probate of her will, and the question was raised whether he was liable to pay probate duty on the fund or any part thereof, *held*, that the power of appointment created by the will was 'property' within the meaning of Article 11 of Schedule I to the Court Fees Act, and that the estate of the testatrix was liable to probate duty in respect thereof, *In re Lakshminarayan Ammal*, 25 Mad 515, *In the goods of George*, 6 B L R Appendix 138. 15 W R 457 notes

There is no provision in the Court Fees Act for the levy of *ad valorem* court-fees on personal property appointed by will under general powers of appointment, *In the goods of Julia Oram*, 21 W R 245: 12 B L R App. 21. The word "property"

has been explained to include even beneficial interest, *In the goods of Beresford and In the goods of Maddock*, 7 B.L.R O.C. 57: 15 W R 456

Property over which a person has a general power of appointment is not his property which makes the estate liable to duty, *In re Maurice Saleh Manasset*, 60 Cal. 1016: 147 I.C. 489: 1933 A.I.R 924 (Cal.).

Note.—In calculating court-fees payable on the value of the property, where such value exceeds Rs. 1,000 the entire value is to be considered and not merely the excess over Rs. 1,000

Property.—The term "property" in clauses 11 and 12 of Schedule I of the Court Fees Act includes property to which the deceased was beneficially entitled, *In the goods of H. B Beresford*, 15 W.R. 456: 7 B L R 57.

Duty in respect of trust property has been excluded by Notification, *The Collector of Kaira* v. *Chunilal Harilal and others*, 29 Bom 161 (167). 6 Bom L R 652 For other cases see under section 19C of this Act.

Shares standing in the name of both husband and wife, would on the death of the husband be the absolute property of the wife, hence not chargeable with court-fee in case of an application for property by the wife, *Deputy Commissioner of Lucknow* v *Mrs M D Aikman*, 11 O W.N 78: 148 I.C. 247: 1934 A I R 72 (Oudh).

In cases of properties situate in different provinces—Court fees at enhanced rates when the fees have been raised, were rightly levied on the value of all the assets, whether in the province or elsewhere, *In the goods of George Thomas Williams*, 50 Cal 957: 27 C W N 812: 75 I C. 466: (1924) A.I R 115 (Cal)

In case of properties situate in different districts—If the property be situate in two districts (in this case also in two provinces and under different High Courts), then the value of the entire property situate in those districts is to be considered and in this case the duty paid in one of the districts was allowed to be deducted from the amount payable on the valuation of the property situate in both districts, *The Commissioner of Singhboom* v. *Jagadish Chandra Deo*, 6 Pat L J. 411: 62 Ind. Cas. 513

Property situate in England.—Where the deceased a partner of ... Calcutta died leaving pr... ed probate was taken out ... cutor applied for probat... on the ground that under an arrangement made after testator's death for sale of his properties, money was paid in England, *held* that exemption

could not be allowed and that duty should be paid, *In the goods of Gladstone*, 1 Cal. 168.

No exemption.—*Doubtful claim*—There is no provision in the Court Fees Act authorizing exemption in respect of a claim supposed to be doubtful, nor is there any such provision in the Act by which the payment of probate duty in England is regulated In case of an exaggerated valuation, the excess duty may be refunded by the Revenue Authorities, *In the goods of E L Beake deceased*, 13 B.L.R App. 24, *In the goods of Ram Chunder Ghose*, 24 Cal 567.

Exemption.—Under section 8 of the Government Savings Bank Act (Act V of 1893) a deposit of Rs. 1,000 is to be exempted from payment of court-fee duty

Where certain property is denied by the applicants to belong to the estate of the deceased, that property is to be excluded in calculating the value of the estate until the contrary is proved, *Nittyo Kali Debya* v *Kedar Chatterjee*, 5 C L R 368

Where the High Court declared the right of the petitioner in the decree and subsequently the petitioner applied for Letters of Administration and claimed exemption from duty, *held*, that no exemption can be made, the duty must be paid, *In the goods of Sreenath Das*, 20 W R 440.

If the gross value of such property exceeds Rs 1,000 but the nett value after deductions of the debts due by the deceased falls below Rs 1,000, then no court-fee is payable, *In the goods of George Henry Quiningborough*, 20 C W.N 501: 22 C L J. 160: 30 Ind. Cas 958

Schedule I, Annexures A and B, of the Court Fees Act make it clear that the duty payable on an application for Probate or Letters of Administration under Sch I, Art. 11 of the Act is to be calculated upon the nett value of the estate obtained by deduction of the amount of debts from the gross value of the estate, *In the goods of Harriett Teviot Kerr, deceased*, 21 Ind. Cas 502· 18 C W N 121: 18 C L J 308. But see *contra*, *The Collector of Maldah* v. *Nirod Kamini Dassy*, 17 C.W.N. 21: 15 Ind Cas 621, where it was held that court-fees are payable on the gross value

Procedure.—The ordinary Court clerk or officer, whose duty it is to see that court-fees are paid, is not authorised in the Calcutta High Court in its original jurisdiction, to allow claims to exemption from probate duty, on his own responsibility and that all such claims are required to be quarried and referred to the taxing officer, *In re Bhubaneshwar Trigunait*, 52 Cal. 871: 27 C W.N 879: 95 I C 529: 1925 A.I.R. 1201 (Cal).

In an application for Probate or Letters of Administration'

the *ad valorem* court-fees prescribed by statute should be paid to the satisfaction of the Court; such payment should be made to the Registrar and certified by him to Court. This certificate or a certificate of the taxing officer, where exemption is claimed and allowed, should be produced to the Court with the application and affidavit of valuation, *In the goods of Omda Bibee*, 26 Cal. 407: 3 C.W.N. 392

Provident Fund.—Provident Fund money is exempted from probate and administration duty as on death it passes to a nominee, and even in the absence of an Administration it does not form an asset of the deceased, *Mrs Agnes* v. *James William*, 82 I.C. 128: 1925 A.I.R. 108 (Nag); *In re Digambar*, 92 I.C. 525: 1926 A.I.R. 306 (Nag.)

Under sec. 3, cl. (2) of the Provident Funds Act (Act XIX of 1925) the money vests in the dependant of the subscriber or depositor and where the dependant is the widow or child of the subscriber or depositor, without being subject to any rights of an assignee under an assignment made before the commencement of the Act, such money or deposit is not liable to duty, *The Secretary of State for India in Council* v. *Mrs Mary Murray*, 33 C.W.N. 1148: 1930 A.I.R. 252 (Cal.): 123 I.C. 646

Private funds (Railway fund)—"Sec. 3, sub-sec. (2) of the Provident Funds Act (Act XIX of 1925) enacts that the sum shall vest in the dependant and shall be free from attachment for any debt or other liability etc. From this it is clear that so far as the Government or Railway Provident Funds are concerned, the money vests in the dependant which term is defined in sec. 2 and is also free from debts contracted before the death of the depositor. The question may arise whether such sum vests also in the nominee in respect of deposits in Government or Railway Provident Funds, because clause (3), sub-sec. (2) carefully confines the operation of that section to the case of dependants. It is true that sec. 4 enacts that the officer whose duty it is to make the payment shall pay the sum or the balance if the subscriber is dead to the dependant, or to a nominee, etc. But sub-sec. (2) of that section shows that the object of that section is merely to enable such officer to make the payment and to keep the Government or the Railway free from all liability in respect of the sum paid." A sum of money in a private provident fund cannot be deemed to vest in the nominee or the widow or the children of the depositor. Therefore a nominee or dependant can only take by succession the estate of the deceased and such deposit is, therefore, not exempt from paying the court-fee when application is made for Letters of Administration to the estate of the deceased subscriber or depositor, *In the matter of Mrs Hamilton King*, (1928) 6 Ran 558: 116 I.C. 467: 1928 A.I.R. 312 (Ran.).

A married sister is not dependant within s. 2 (c) of the Provident Funds Act, 1925 but an unmarried sister is. Money in deposit in a Railway Provident Fund is an asset of the deceased, therefore if such a deposit comes into the hands of a person not a dependant on the deceased and if such money exceeds Rs 2,000, it is liable to be assessed under Sch I, Art. 11 of the Court Fees Act A party cannot be exempted from payment of duty leviable under the Court Fees Act, *In re Mrs Norah Margaret Robinson,* 5 Luck 712: 7 O.W N. 324: 122 I C 322· 1930 A I R 145 (Oudh): 1930 I R. 98 (Oudh) F.B See also *In re Coses Farnandez and another,* 142 I.C 359: 1933 A I.R 101 (Sind).

12 Certificate under the Succession Certificate Act, 1889 (*Certificate under Part X of the Indian Succession Act,* 1925—*in Bengal, Bombay and C P*)	In any case —	Two per centum on the amount or value of any debt or security specified in the certificate under section 8 of the Act, and three per centum on the amount or value of any debt or secur to which the cert ficate is extended under section 10 of the Act NOTE—(1) The amount of a debt is its amount, including interest on the day on which the inclusion of the debt in the certificate is applied for so far as such amount can be ascertained (2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act, and, where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.

NOTES

Amendment.—This Article has been amended in Bengal by Bengal Act IV of 1922, and Act XI of 1935; in B. & O by B & O Act I of 1922; in Bombay by Bombay Act II of 1932; in Madras by Madras Act V of 1922, in C P by C. P. Act XVI of 1935 *See the respective Amendment Acts, infra*

Heirship certificate—Where the value of the property in respect of which certificate of heirship is sought, the stamp duty should be calculated on the whole amount, not on the excess of over Rs. 1,000—the condition of liability—being excess above Rs 1,000, *Anonymous,* 5 M H C App. 45

Double fee is to be paid—Whenever a fresh succession certificate is taken, even though it is to collect debts for which a succession certificate has already been taken out and duty paid, the duty prescribed by the Court Fees Act must be paid. *In re Sorojebashini Debi,* 20 C W.N. 1125: 36 Ind Cas 125

The effect of the provisions in the note to Art. 12 of Schedule 1 to the Court Fees Act on the operation of a certificate duly granted, which has become liable to cancellation under that provision, but has not been cancelled, is, that the validity of such subsisting certificate is proof of the representative right of person to whom it was granted to enforce by suit or process of execution, payment of a debt and not to prevent realisation of monies. Its apparent object is not to prevent realization of money due by means of an existing certificate, but to secure the payment of the stamp revenue on all sums so realized by a suit or other proceedings in excess of the amount or value of the property in respect of which the certificate was granted, *Govindappah* v *Kondappah Sastrulu,* 6 M H.C. 131 See also *Bava Sant Ram* v. *Jasmal,* 94 P.R. 1887

Construction.—The Article refers to 'the amount or value of any debt or security' and these words refer only to individual debts and individual securities Therefore the amount payable should be on individual items and not according to the total amount of those items, *Pirthurinath Bhargawa* v. *Estate of late Trilok Nath Bhargawa,* 151 I C. 262: 11 O.W.N. 1079: 1934 A.I.R. 414 (Oudh).

Calculation of duty.—*See under Art 11 of Sch I, supra* The court-fee stamp on a certificate of administration is to be calculated on the valuation of the estate excluding the properties denied by the applicants to belong to the estate, *Nittyo Kali Debya* v *Kedar Nath Chatterjee and others,* 5 C.L R. 368

The applicant for a certificate need not apply to collect all the debts due to the deceased In calculating the amount of

the debt, the satisfied portion of the debt must be excluded and the duty is payable on the balance, *Muhammad Ali Khan* v. *Pultan Bibi and others*, 19 All. 129

No duty is payable on a certificate on property valued at below Rs 1000, but the duty is payable on the total sum if the total amount exceeds Rs 1000 which is to be assessed on the total sum, *In Re Nalini Kanta Pal* 60 Cal. 1262 37 C W N 930: 1934 A.I.R 38 (Cal): 147 I.C. 1016

12A. Certificate under the Regulation of the Bombay Code, No. VIII of 1827.	(1) As regards debts and securities.	The same fee as would be payable in respect of a certificate under the Succession Certificate Act, 1889, or in respect of an extension of such a certificate, as the case may be
	(2) As regards other property in respect of which the certificate is granted—	
	When the amount or value of such property exceeds one thousand rupees, but does not exceed ten thousand rupees	Two per centum on such amount of value
	When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees	Two and one-half percentum on such amount or value
	When such amount or value exceeds fifty thousand rupees	Three per centum on such amount or value

NOTES.

Amendment.—This Article was amended by the Court :es Amendment Act, 1910 (Act VII of 1910) section 2

Local Amendments:—This Article has been amended by ›mbay Act II of 1932

13. Application to the gh Court of Judica-re at Lahore for the ercise of its jurisdic-n under section 44 of e Punjab Courts Act, 18, or to the Court of e Financial Commis-oner of the Punjab for e exercise of its revi-onal jurisdiction under ction 84 of the Punjab nancy Act, 1887.	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees	Two rupees.
	When such amount or value exceeds twenty-five rupees.	The fee leviable on a memorandum of appeal.

NOTES

Amendment.—This Article was inserted by the Punjab Courts Act, 1884 (18 of 1884), section 71, as amended by the Punjab Courts Act, 1899 (25 of 1899), section 6.

The words "or to the Court of the Financial....the Punjab Tenancy Act, 1887, were added by section 1 of the Court Fees Amendment Act, 1900 (9 of 1900) but Act IX of 1900 has been repealed by Act XVIII of 1928

The words "High Court of Judicature at Lahore" were substituted for the words 'Chief Court in the Punjab' by Repealing and Aemnding Act, 1919 (Act XVIII of 1919), section 2 and Schedule to that Act

This Article has been amended by Punjab Act VII of 1922, section 6 as amended by the Punjab Acts I and VI of 1926 and the Article set out above is inserted as amended in the place of the original Article

This section was repealed by the Punjab Courts (Amendment) Act, 1912, but is again re-enacted by the Punjab Act VII of 1922 as amended

N W Frontier Provinces—Similar fees are payable on the like applications to the Court of the Judicial Commissioner of the N W Frontier Province, *see* section 85 (1) of the N W. Frontier Province Law and Justice Regulation, 1901 (7 of 1901)

Application for revision—An application for revision of an order rejecting an objection to an award in a case transferred to arbitration through Court and in which a decree was passed in accordance with the award, is chargeable with *ad valorem* court-fee under Article 13, Schedule 1 of the Court Fees Act When the subject-matter of the dispute exceeds Rs 25, the fact that no decree was framed at the date of making the application would not affect the question of court-fee, *Narpat Rai* v *Devi Das,* 13 P W R 1911 4 P L R 1911: 9 Ind. Cas 388

The court-fee payable on a petition for revision of an order rejecting objections to an award is *ad valorem* on the amount of the decree based on that award where it exceeds Rs 25 under *Art 13, Schedule I of the Court Fees Act, Mr J A Mathews* v *Messrs Singleton Benda & Co, Ltd, London,* 108 I.C. 382 See also *Karhaya Lal Sitaram* v *Daulat Ram Naubat Rai,* 1929 A I R. 367 (Lah): 110 I.C 302; *Harbhajan Singh Jairam Singh* v *Kalu Mal Basheshar Nath,* 1929 A I R. 369 (Lah.): 111 I C 145.

Refund of fees—As to refund of fees, see section 72 of the Punjab Courts Act (Act XVIII of 1884 as amended by Act XXV of 1899, section 7), but now Act of 1918

14. Application to the High Court of Judicature at Rangoon for the exercise of its revisional jurisdiction under section 115 of the Code of Civil Procedure, 1908 or section 25 of the Provincial Small Causes Courts Act, 1887 (or section 25 of the Rangoon Small Cause Court Act, 1920)	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees	Two rupees.
	When the amount or value exceeds twenty-five rupees	The fee leviable on a memorandum of appeal.

NOTES.

See section 85 of the Lower Burma Act, 1899 (II of 1899) and the Lower Burma Courts Act, 1900 (VI of 1900), section 47, Schedule I The Chief Court no longer exists There is now a High Court in Burma

The words 'High Court of Judicature at Rangoon' were substituted for the words "Chief Court of Lower Burma" by Act XI of 1923, sec 2, Schedule I

The words "Sec 115 of the Code of Civil Procedure" are substituted for the words "Sec. 622 of the Code of Civil Procedure" under sec 158 of the present Code of Civil Procedure (Act V of 1908)

The words "or section .. Court Fees Act, 1920" have been inserted by the Burma Courts Amendment Act, 1926 (Bur Act III of 1926)

15 *Application to the Court of the Judicial Commissioner, Upper Burma, for the exercise of its revisional jurisdiction under section* 115 *of the Code of Civil Procedure,* 1908 *or section* 25 *of the Provincial Small Cause Courts Act,* 1887.	*When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees*	*Two rupees*
	When such amount or value exceeds twenty-five rupees	*The fee leviable on a memorandum of appeal.*

NOTES.

This Article was inserted in the First Schedule to this Act in its application to Upper Burma, *see* the Upper Burma Civil Courts Regulation, 1896 (1 of 1896), sec. 36, Bur. Code.

The words "or section 14 of the Upper Burma Civil Courts Regulation, 1896" were repealed by the Upper Burma Courts (Amendment) Regulation, 1903 (V of 1903), section 4. The entire Article was repealed by the Repealing and Amending Act, 1923 (Act 11 of 1923) sec. 3 and Schedule II.

Table of Rates of Ad Valorem Fees.
Act VII of 1870 (Original Act).

Table of rates of 'ad valorem' fees leviable on the institution of suits

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee (Act VII of 1870)			When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee (Act VII of 1870)		
Rs	Rs	Rs	A.	P.	Rs	Rs	Rs.	A	P
	5	0	6	0	340	350	26	4	0
5	10	0	12	0	350	360	27	0	0
10	15	1	2	0	360	370	27	12	0
15	20	1	8	0	370	380	28	8	0
20	25	1	14	0	380	390	29	4	0
25	30	2	4	0	390	400	30	0	0
30	35	2	10	0	400	410	30	12	0
35	40	3	0	0	410	420	31	8	0
40	45	3	6	0	420	430	32	4	0
45	50	3	12	0	430	440	33	0	0
50	55	4	2	0	440	450	33	12	0
55	60	4	8	0	450	460	34	8	0
60	65	4	14	0	460	470	35	4	0
65	70	5	4	0	470	480	36	0	0
70	75	5	10	0	480	490	36	12	0
75	80	6	0	0	490	500	37	8	0
80	85	6	6	0	500	510	38	4	0
85	90	6	12	0	510	520	39	0	0
90	95	7	2	0	520	530	39	12	0
95	100	7	8	0	530	540	40	8	0
100	110	8	4	0	540	550	41	4	0
110	120	9	0	0	550	560	42	0	0
120	130	9	12	0	560	570	42	12	0
130	140	10	8	0	570	580	43	8	0
140	150	11	4	0	580	590	44	4	0
150	160	12	0	0	590	600	45	0	0
160	170	12	12	0	600	610	45	12	0
170	180	13	8	0	610	620	46	8	0
180	190	14	4	0	620	630	47	4	0
190	200	15	0	0	630	640	48	0	0
200	210	15	12	0	640	650	48	12	0
210	220	16	8	0	650	660	49	8	0
220	230	17	4	0	660	670	50	4	0
230	240	18	0	0	670	680	51	0	0
240	250	18	12	0	680	690	51	12	0
250	260	19	8	0	690	700	52	8	0
260	270	20	4	0	700	710	53	4	0
270	280	21	0	0	710	720	54	0	0
280	290	21	12	0	720	730	54	12	0
290	300	22	8	0	730	740	55	8	0
300	310	23	4	0	740	750	56	4	0
310	320	24	0	0	750	760	57	0	0
320	330	24	12	0	760	770	57	12	0
330	340	25	8	0	770	780	58	8	0

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee (Act VII of 1870)			When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee. (Act VII of 1870)		
Rs	Rs.	Rs.	A	P	Rs	Rs	Rs	A	P.
780	790	59	4	0	3,800	3,900	220	0	0
790	800	60	0	0	3,900	4,000	225	0	0
800	810	60	12	0	4,000	4,100	230	0	0
810	820	61	8	0	4,100	4,200	235	0	0
820	830	62	4	0	4,200	4,300	240	0	0
830	840	63	0	0	4,300	4,400	245	0	0
840	850	63	12	0	4,400	4,500	250	0	0
850	860	64	8	0	4,500	4,600	255	0	0
860	870	65	4	0	4,600	4,700	260	0	0
870	880	66	0	0	4,700	4,800	265	0	0
880	890	66	12	0	4,800	4,900	270	0	0
890	900	67	8	0	4,900	5,000	275	0	0
900	910	68	4	0	5,000	5,250	285	0	0
910	920	69	0	0	5,250	5,500	295	0	0
920	930	69	12	0	5,500	5,750	305	0	0
930	940	70	8	0	5,750	6,000	315	0	0
940	950	71	4	0	6,000	6,250	325	0	0
950	960	72	0	0	6,250	6,500	335	0	0
960	970	72	12	0	6,500	6,750	345	0	0
970	980	73	8	0	6,750	7,000	355	0	0
980	990	74	4	0	7,000	7,250	365	0	0
990	1,000	75	0	0	7,250	7,500	375	0	0
1,000	1,100	80	0	0	7,500	7,750	385	0	0
1,100	1,200	85	0	0	7,750	8,000	395	0	0
1,200	1,300	90	0	0	8,000	8,250	405	0	0
1,300	1,400	95	0	0	8,250	8,500	415	0	0
1,400	1,500	100	0	0	8,500	8,750	425	0	0
1,500	1,600	105	0	0	8,750	9,000	435	0	0
1,600	1,700	110	0	0	9,000	9,250	445	0	0
1,700	1,800	115	0	0	9,250	9,500	455	0	0
1,800	1,900	120	0	0	9,500	9,750	465	0	0
1,900	2,000	125	0	0	9,750	10,000	475	0	0
2,000	2,100	130	0	0	10,000	10,500	490	0	0
2,100	2,200	135	0	0	10,500	11,000	505	0	0
2,200	2,300	140	0	0	11,000	11,500	520	0	0
2,300	2,400	145	0	0	11,500	12,000	535	0	0
2,400	2,500	150	0	0	12,000	12,500	550	0	0
2,500	2,600	155	0	0	12,500	13,000	565	0	0
2,600	2,700	160	0	0	13,000	13,500	580	0	0
2,700	2,800	165	0	0	13,500	14,000	595	0	0
2,800	2,900	170	0	0	14,000	14,500	610	0	0
2,900	3,000	175	0	0	14,500	15,000	625	0	0
3,000	3,100	180	0	0	15,000	15,500	640	0	0
3,100	3,200	185	0	0	15,500	16,000	655	0	0
3,200	3,300	190	0	0	16,000	16,500	670	0	0
3,300	3,400	195	0	0	16,500	17,000	685	0	0
3,400	3,500	200	0	0	17,000	17,500	700	0	0
3,500	3,600	205	0	0	17,500	18,000	715	0	0
3,600	3,700	210	0	0	18,000	18,500	730	0	0
3,700	3,800	215	0	0	18,500	19,000	745	0	0

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee (Act VII of 1870)			When the amount or value of the subject-matter exceeds	But does not exceed.	Proper Fee (Act VII of 1870)		
Rs	Rs.	Rs	A	P	Rs	Rs	Rs	A.	P.
19,000	19,500	760	0	0	1,90,000	1,95,000	1,900	0	0
19,500	20,000	775	0	0	1,95,000	2,00,000	1 925	0	0
20,000	21,000	795	0	0	2,00,000	2,05,000	1,950	0	0
21,000	22,000	815	0	0	2,05,000	2,10,000	1,975	0	0
22,000	23,000	835	0	0	2,10,000	2,15,000	2,000	0	0
23,000	24,000	855	0	0	2,15,000	2,20,000	2,025	0	0
24,000	25,000	875	0	0	2,20,000	2,25,000	2,050	0	0
25,000	26,000	895	0	0	2,25,000	2,30,000	2,075	0	0
26,000	27,000	915	0	0	2,30,000	2,35,000	2,100	0	0
27,000	28,000	935	0	0	2,35,000	2,40,000	2,125	0	0
28,000	29,000	955	0	0	2,40,000	2,45,000	2,150	0	0
29,000	30,000	975	0	0	2,45,000	2,50,000	2,175	0	0
30,000	32,000	995	0	0	2,50,000	2,55,000	2,200	0	0
32,000	34,000	1,015	0	0	2,55,000	2,60,000	2,225	0	0
34,000	36,000	1,035	0	0	2,60,000	2,65,000	2,250	0	0
36,000	38,000	1,055	0	0	2,65,000	2,70,000	2,275	0	0
38,000	40,000	1,075	0	0	2,70,000	2,75,000	2,300	0	0
40,000	42,000	1,095	0	0	2,75,000	2,80,000	2,325	0	0
42,000	44,000	1,115	0	0	2,80 000	2,85,000	2,350	0	0
44,000	46,000	1,135	0	0	2,85,000	2,90,000	2,375	0	0
46,000	48,000	1,155	0	0	2,90,000	2,95,000	2,400	0	0
48,000	50,000	1,175	0	0	2,95,000	3,00,000	2,425	0	0
50,000	55,000	1,200	0	0	3,00,000	3,05,000	2,450	0	0
55,000	60,000	1,225	0	0	3,05,000	3,10,000	2 475	0	0
60,000	65,000	1,250	0	0	3,10,000	3,15,000	2,500	0	0
65,000	70,000	1,275	0	0	3,15,000	3,20,000	2,525	0	0
70,000	75,000	1,300	0	0	3,20,000	3,25,000	2,550	0	0
75,000	80,000	1,325	0	0	3,25,000	3,30,000	2,575	0	0
80,000	85,000	1,350	0	0	3,30,000	3,35,000	2,600	0	0
85,000	90,000	1,375	0	0	3,35,000	3,40,000	2,625	0	0
90,000	95,000	1,400	0	0	3,40,000	3,45,000	2,650	0	0
95,000	1,00,000	1,425	0	0	3,45,000	3,50,000	2,675	0	0
1,00,000	1,05,000	1,450	0	0	3,50,000	3,55,000	2,700	0	0
1,05,000	1,10,000	1,475	0	0	3,55,000	3,60,000	2,725	0	0
1,10,000	1,15,000	1,500	0	0	3,60,000	3,65,000	2,750	0	0
1,15,000	1,20,000	1,525	0	0	3,65,000	3,70,000	2,775	0	0
1,20,000	1,25,000	1,550	0	0	3,70,000	3,75,000	2,800	0	0
1,25,000	1,30,000	1,575	0	0	3,75,000	3,80,000	2,825	0	0
1,30,000	1,35,000	1,600	0	0	3,80,000	3,85,000	2,850	0	0
1,35,000	1,40,000	1,625	0	0	3,85,000	3,90,000	2,875	0	0
1,40,000	1,45,000	1,650	0	0	3,90,000	3,95,000	2,900	0	0
1,45,000	1,50,000	1,675	0	0	3,95,000	4,00,000	2,925	0	0
1,50,000	1,55,000	1,700	0	0	4,00,000	4,05,000	2,950	0	0
1,55 000	1,60,000	1,725	0	0	4,05,000	4,10,000	2,975	0	0
1,60,000	1,65 000	1,750	0	0	4,10,000		3,000	0	0
1,65,000	1,70,000	1,775	0	0					
1,70,000	1,75,000	1,800	0	0					
1,75,000	1,80,000	1,825	0	0					
1,80,000	1,85,000	1,850	0	0					
1,85,000	1,90,000	1,875	0	0					

SCHEDULE II.

FIXED FEES

Number.		Proper Fee.
1 Application or petition.	(*a*) When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings	One anna [*Two annas in Bengal, Bihar and Orissa, Bombay, U P, the Punjab and C P*]
	or when presented to any officer *of land-revenue by any person* holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement,	One anna [*Two annas in Madras, Bihar and Orissa, Bengal, Bombay, U P, the Punjab and C P*]
	or when presented to any Municipal Commissioner [*or member of a District Court—added in Bengal*] under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement	One anna [*Two annas in Bengal, Bihar and Orissa, Bombay, U P the Punjab and C P*]
	or when presented to any Civil Court other than a principal Civil Court of original jurisdiction, * * * or to any Court of Small Causes, constituted under Act No IX of 1887 or under the Bengal North Western Provinces and Assam Civil Courts Act No XII of 1887, sec 25 or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject matter is less than fifty rupees	One anna [*Two annas in Bengal, Bihar and Orissa Bombay Punjab, U P Madras and C P*]
	or when presented to any Civil, Criminal or Revenue Court or to any Board or Executive Officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court,	One anna. [*Two annas in Bengal Bihar and Orissa Bombay, Madras U P., the Punjab and C. P.*]

SCHEDULE II.—(*Contd.*)

Fixed Fees.

Number.		Proper Fee.
1. Application or petition—*contd.*	Board, or officer, or of any other document on record in such Court or Office	
	[(*aa*) *When presented to a Collector or other officer of revenue for assistance under s. 86 of the Bombay Land Revenue Code, 1879—in Bombay*]	[*Four annas—in Bombay*]
	(*b*) When containing a complaint or charge of any offence other than an offence for which police-officers may, under the Criminal Procedure Code, 1898, arrest without warrant, and presented to any Criminal Court,	Eight annas [*Complaint—One rupee in Bengal, Punjab and Madras.* [*For various items see C. P. Amendment Act.*] *In other cases—12 annas in Bengal B. & O. U. P. and Madras, One rupee in Punjab*]
	or when presented to a Civil, Criminal or Revenue Court or to a Collector, or any Revenue-officer having jurisdiction equal to or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act;	Eight annas [*One rupee in the Punjab, 12 annas in Bihar and Orissa, Bengal, U. P., Madras, and C. P.*]
	or to deposit in Court revenue or rent;	Eight annas [*One rupee in Punjab, 12 annas in Bengal, U. P. and Bihar and Orissa*]
	or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant.	Eight annas [*12 annas in Bengal Bihar and Orissa, and U. P. and One rupee in Punjab*]
	(*c*) When presented to a Chief Commissioner or other Chief Controlling Revenue or Executive Authority, or to a Commissioner of Revenue or Circuit or to any chief officer charged	One rupee. [*One rupee eight annas in Bengal Bihar and Orissa C. P. U. P. and Madras:*

SCHEDULE II.—(*Contd.*)

Fixed Fees.

Number.		Proper Fee
1. Application or petition—*contd*	with the executive administration of a Division and not otherwise provided for by this Act	*two rupees in Bombay*] [*For items in C. P. see C. P. Amendment Act.*] [*Rupees three when presented to the Board of Revenue—in U. P.*]
	(*d*) When presented to a High Court	Two rupees. [*Applications under s. 115, C. P. C. Five rupees if the value be Rs. 1,000 and if the value exceeds Rs. 1,000 then Rs. 10 in Bengal and Madras.*] [*Three rupees in Bihar and Orissa. Four rupees in Bombay and U. P. Five rupees—in C. P. for s. 25 of the P. S. C. C. Act and s. 115, C. P. C.*] [*In Punjab (i) under the Indian Companies Act, 1913 for winding up a Company—one hundred Rupees; Rupees fifty in U. P.* *(ii) under the same Act for taking some other judicial action—five Rupees.* *(iii) in all other cases—Two Rupees; Three rupees—in U. P.*]

NOTES.

Amendments.—The words "or to any Cantonment Magistrate sitting as a Court of Civil Judicature under Act No III of 1859" were repealed by the Cantonments Act, 1889 (13 of 1889).

Repeals—For Act XI of 1856, *see* now the Provincial Small Cause Courts Act, 1887 (9 of 1887) by which Act 11 of 1865 was repealed

For Act XVI of 1868 *see* now section 25 of the Bengal, North-Western Provinces and Assam Civil Courts Act, 1887 (12 of 1887)

The expression 'a principal Civil Court of original jurisdiction' occurred in Civil Courts Act of 1868 (Act XVI of 1868) and meant the court of the District Judge The expression does not occur in later Civil Courts Acts

Local Amendments.—This Schedule has been admended in Bengal by B C Act IV of 1922, in Madras by Madras Act V of 1922, in Bombay by Bombay Act II of 1932 and in Bihar and Orissa by B and O Act I of 1922; in Punjab by Punjab Act VII of 1922 as amended, in U P by U P Amendment Act III of 1932 and in C P by C P Amendment Act XVI of 1935

Assistance of Collector in Ejecting a Raiyat.—An application for the assistance of a Collector in ejecting a raiyat need only be stamped with a court-fee of 8 annas, *Pyari Mohan v Kinu Bewa*, 2 B L R 226

Award.—The proper court-fee upon an application to file an award under section 525, C P.C (Sch II, Rule 20, C P.C) is that prescribed for applications *Bijadhur* v. *Manohur*, 10 Cal 11: 13 C.L R 171, *Lala Dharam Das* v. *Ajudhia Pershad*, 70 P.R. 1881

Objections to an award.—Written objection to an award is indubitably a document filed in Court. Such a document is nothing more or nothing less than an application to the Court to set aside an award on certain specified grounds. It, therefore, falls within the proviso of Art 1 (b) of the second Schedule of the Court Fees Act and *prima facie*, it cannot be filed or exhibited or made use of in any manner unless the prescribed fee of eight annas is paid on it. When a written application is filed it must be stamped. It clearly does not fall within the exceptions provided by s. 19 of the Court Fees Act which *inter alia* exempt a written statement in a pending suit but makes no mention whatsoever of written objections to an award, *Adamali v.* [illegible] *d another*, 23 S L R. 91: 107 I.C. 223: 1928 A.I.R.

Civil Procedure Code.—Section 115 is for Bengal Amendment only For section 115 see Code of Civil Procedure (Act V of 1908)

Sanction to prosecute—Applications against orders under section 476 of the Code of Criminal Procedure by a Civil Court, come under section 115 of the Code of Civil Procedure, *Har Prasad Das* v *The Emperor*, 40 Cal 477 17 C W N 647: 19 I.C. 197 17 C L J 647 F B. (the order of reference excluded consideration of section 195 of the Criminal Procedure Code; but applications against orders under section 195 of the Code of Criminal Procedure by a Civil Court do not come under section 115 of the Code of Civil Procedure as under that section a superior court has power to set aside an order by the inferior court passed under that section), *Budhu Lal* v *Chattu Gope*, 43 Cal 597. 36 I C 472: 17 Cr.L J 504 (The same case in appeal in 44 Cal 804), *Salig Ram* v. *Ramji Lal*, 28 All. 554: 3 A.L J 394; See *contra*, *Deputy Legal Remembrancer of B. & O* v. *Ram Udar Singh*, 19 C W.N 447: 21 C.L.J. 198: 28 I C. 334. *Beni Prasad* v. *Sarju Prasad* 33 All 512: 9 I.C. 982.

Copy—application for.—An application to the High Court for certified copies of the decree and judgment may be made on a stamp of one anna, *Turif Biswas Petitioner*, 7 W.R. 455 *See* also rules of the High Court (Calcutta), Appellate Side. The fee has been now raised to two annas. The amount of court-fee stamps on application for copy is determined by the rules of each High Court.

An application to an Assistant Commissioner of Income Tax for a copy of an order passed by him, is to be stamped (under the Patna Amendment Act) with a court-fee of two annas under paragraph 5 of Art. 1 (a) of Sch. II of the Court Fees Act, *Basant Lal Ramgidas* v. *Commissioner of Income Tax, Bihar and Orissa*, 11 Patna 40: 136 I.C. 302: 1932 A.I.R. 103 (Pat): 1932 I R 78 (Patna).

Divorce.—A prayer for divorce by a mehomedan wife cannot be granted on an application bearing a court-fee of 12 annas and presented to the District Judge as Kazi The procedure is to file a suit, *Kabil Gazi* v. *Madari Bibi* 57 C L J. 106: 1933 A.I.R 630 (Cal.).

Information to Court.—A document which is merely a petition to the court informing it of an agreement into which the parties had orally entered out of court to compromise a suit and praying for a decree in the terms of the compromise, does not require to be engrossed upon a general stamp paper but only requires the ordinary court-fee of eight annas under Schedule II,

Art. 1, *Ram Saran Lal* v. *Emperor,* 40 All. 19: 15 A.L.J. 846. See also *Reference under Stamp Act,* 8 Mad. 15 F.B.

Minors.—A petition under Act IX of 1861 (Act relating to minors) requires a stamp as on a petition. *Anonymous,* 6 P R. 1873.

Probate.—The stamp requisite for an application for a probate of a will or, Letters of Administration is not required to be proportionate to the value of the property involved as such applications come under the provision made in Art. 1, Schedule II of Act VII of 1870. for common applications and petitions, *In the matter of Judoonath Sadhoo Khan and others,* 15 W.R. 40

Where an application for probate was filed and the opposite party contested the same and on the trial Court deciding the case in favour of petitioners, the opposite party filed an appeal *Held,* that Art I, Sch II of the Court Fees Act applied and not Art 2 of Sch I; on principle *ad valorem* court-fee should not be levied in such cases, *J M Rodrigues* v. *A M. Mathias,* 9 M L.T 314: 11 M W N 237 21 M L J 481: 9 Ind Cas. 538 See also *Lee* v *Hardy,* 9 All W.N 27 which was a case under the Succession Act and it was held that a memorandum of appeal is to be stamped with a court-fee of Rs 2 only. But see *Miss Eva Mountstephens* v *Mr Hunter Garnett Orme,* 35 All 448. 22 Ind Cas. 98, where it was *held,* that Rs. 10 is payable as court-fees on the memorandum of appeal under Art. 17, clause vi, Sch. II of the Court Fees Act as it is impossible to estimate at a money value the subject-matter of dispute.

Trusts Act.—Petitions (relating to *Radd-i-Mazalim*) under sections 34 and 74 of the Trusts Act are to be stamped under Sch. II Art 1 (d) of the Court Fees Act, *Md Sadiq Ali* v. *Karim Ali,* 11 O.W.N. 323: 150 I.C. 193· 1934 A I.R 118 (Oudh).

1A. Application to any Civil Court that records may be called for from another Court:— When the Court grants the application and is of opinion that the transmission of such records involves the use of the post.	Twelve annas in addition to any fee levied on the application under Clause (*a*), Clause (*b*) or Clause (*d*) of Art. 1 of this Schedule. [*Amended in Bihar and Orissa—Fee 1 Rupee*] [*One rupee two annas —in U. P.*]

NOTES.

Change in Law.—This Article has been added by Act XIV of 1913, section 2 and amended by B. and O Act I of 1922 and in U. P. by U. P. Act III of 1932.

2. Application for leave to sue as a pauper.		Eight annas.
3 Application for leave to appeal as a pauper	(a) When presented to a District Court	One rupee.
	(b) When presented to a Commissioner or a High Court.	Two rupees
4 A plaint or memorandum of appeal in a suit to obtain possession under Act No XVI of 1838, or [the Mamlatdars' Courts Act, 1876.]		Eight annas. [*One rupee in the Punjab*]

NOTES

Amendments.—This Article has been amended in Punjab by Punjab Act VII of 1922 as amended

The words "the Mamlatdar's Courts Act, 1876" were substituted for the words "Bombay Act No V of 1864" (*to give Mamlatdars' Courts jurisdiction in certain cases to maintain existing possession, or to restore possession to any party dispossessed otherwise than by course of law*), by the Repealing and Amending Act, 1891 (12 of 1891)

The Mamlatdar's Courts Act, 1876 is now the Bombay Mamlatdars' Courts Act, 1906 (Bom Act II of 1906)

Act XVI of 1838 relates to suits in the Bombay Presidency and has been declared to be in force in the Bombay Presidency except the Scheduled Districts by Act XV of 1874 s 5.

5 Plaint or memorandum of appeal [*or of cross objection in Bihar and Orissa*] in a suit to establish or disprove a right of occupancy	Eight annas [*Twelve annas in U P.*] [*One rupee in Punjab.*]

NOTES

Amendments.—This Article has been amended in Punjab by Punjab Act VII of 1922 as amended and in Bihar and Orissa and by U P Act III of 1932

In a suit under section 95 of the Agra Tenancy Act, 1901, to declare the plaintiff's status as an occupancy tenant, the plaint or memorandum of appeal should bear a court-fee of eight annas as provided in Art 5 of Sch II to the Court Fees Act, and section 7 paragraph xi does not apply to such a suit, *Ratan Singh v Khem Singh*, 40 All 358: 16 A L J 167: 44 Ind Cas. 608

Where a suit is brought to eject the defendant as a tenant-at-will, the real object being to defeat the d[illegible]

claim to the land as an occupancy rayat, the suit thus being really brought to contest the right of occupancy, the plaint or memorandum of appeal need only be stamped with a court-fee of annas 8, *Bibi Nurjahan* v *Marfan Mundul*, 11 C L.R. 91. See also *Brahmayya* v *Lakshminarasimham*, 16 Mad 310.

A suit not coming under this Article in its inception, would not in appeal come under this Article. *Haladhar* v. *Mangal Reja*, 34 C W.N 217: 126 I C 777: 1930 A I.R. 793 (Cal).

6 [Bail-bond or other instrument of obligation given in pusuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1898, or the Code of Civil Procedure 1908 and not otherwise provided for by this Act.]	Eight annas [*One rupee in Bombay.*] [*Twelve annas in U. P.*]

NOTES.

Change in Law.—This Article is substituted for the old Art 6 by Act XVII of 1914 which contained the words "Bail-bond or other instrument of obligation not otherwise provided for by this Art, when given by the direction of any Court or executive authority" by the Probate and Administration Act, 1889 (6 of 1889), section 8 (2).

The words "1908 and not otherwise provided for by this Act" were added by Act VII of 1914, first Schedule.

N B.—The reference to the old Code of Criminal Procedure is altered in accordance with section 3 (1) of Act V of 1898

Note.—By Act VI of 1889 section 18 (4) the words "or by the Court Fees Act, 1870" were added to Art. 15, Schedule I of the Stamp Act, hence double duty may not be payable under the Court Fees Act and the Stamp Act in cases where the instrument of obligation is in pursuance of an order under the Code of Civil Procedure

Amendment.—This Article has been amended in Bombay by Bombay Act II of 1932; in U. P. by U. P. Act III of 1932.

Application.—Art. 6, Sch. II to the Court Fees Act as amended applies only to bail-bonds or other instruments of obligation under the Code of Criminal Procedure or under the Code of Civil Procedure, *Cheedella Chenchayya* v *Amureddi Pichireddi*, 100 I C. 545: 52 M.L J. 153: 1927 M.W.N. 281: 25 L.W. 246: 1927 A.I.R. 377 (Madras).

For the Court Fees Act to apply, two conditions must be satisfied: (1) the order must be an order passed under the Code

of Civil Procedure, and (2) . . . .
of an order by a Court, *Pc*
M.L.J 466: 41 L.W 482·
(Mad.): 155 I C. 559 F.B

Security for costs of P C appeal—Security bonds for costs of appeal to the Privy Council come under Art. 12, Schedule A, Act X of 1882 (Stamp Act), *Soonjharee Koonwar* v *Rameswur Pandey*, 5 W.R. Mis. 47, but this was the old law.

Stay of execution

Where the appellant was ordered to find security for the costs of the respondent in the event of her appeal being dismissed and she in compliance with the above order of the Court filed a security bond stamped with a court-fee of 8 annas, *held*, as the bond is given under orders of the Court as security by one party for costs of another, it is subject to two duties (*a*) an *ad valorem* stamp under the Stamp Act, Art 13, Schedule I, (*b*) a court-fee of 8 annas under the Court Fees Act, Art 6 Schedule II, *Kulwanta* v *Mahabir Prasad*, 11 All 16 F B (1888) 8 All W N. 281 But security bond given by the appellant for stay of execution under a conditional order of Court staying execution upon the appellant giving security must be stamped under the Stamp Act These are not strictly under orders of a Court as the party may furnish them or not as he pleases, *Dwarkanath Dey* v. *Sailaja Mullick*, 21 C W N 1150 43 I C 376, but this case was not approved in 53 Cal 101 F B

A security bond for the production of attached livestock given in accordance with the requirements of the Rules under section 269 of the C P Code of 1882, is a bond given in pursuance of an order made by a Court under a section of the Code of Civil Procedure, within the meaning of Art 6, Schedule II of the Court Fees Act, the High Court said, "where a bond is given in pursuance of a Rule made under powers conferred by a section of the Code, I think the bond may be said to be given in pursuance of an order made by a Court under a section of the Code of Civil Procedure, that consequently the bond is "otherwise provided for by the Court Fees Act" and that the stamp payable is an eight annas stamp under Court Fees Act," *Reference under the Court Fees Act, re The District Munsiff of Tiruvallur*, 37 Mad 17 (21) 24 M L J 637· 20 Ind Cas 775

A security bond taken on an order for stay of execution must be stamped in accordance with the Stamp Act and cannot be written on plain paper bearing a court-fee of eight annas, *Guran Ditta Mal* v *Firm Gurudasmal Ramchand and others*, 1926 A I R 552 (Lahore). 91 I C 772 7 L.L J. 343

A bond given in pursuance of an order of the Court f
stay of execution under the Code of Civil Procedure

imposing only a personal obligation on the surety is chargeable only under the Court Fees Act and not under the Indian Stamp Act, *Jawala Mal* v. *Gian Chand*, 14 Lah. 708: 34 P.L.R. 480: 143 I C 12: 1934 A I R 228 (Lah)

A security bond executed by the surety for the stay of execution and due performance of the obligation under the decree, need only be stamped as required by Art. 6, Sch. II of the Court Fees Act. The High Court said, "If such a security bond is a personal bond, Art 6, Sch II. Court Fees Act alone applies and a court-fee of annas eight is sufficient. If it hypothecates immoveable property, then it must also be stamped under Art. 40, Stamp Act," *Muhammad Ewaz* v. *Naneh Mian and other,* 1929 A I R 205 (Lah.): 117 I.C. 226.

Bonds under other provisions of the Code of Civil Procedure—Where in a certain claim case, the claimant filed a security bond executed by one Yad Ali who agreed to be liable up to Rs 10 in case he failed to produce certain goats which were attached in execution, *held,* Art. 6 of Sch. II of the Court Fees Act applies to the instrument of obligation as it was given in pursuance of an order made by a Court under the Code of Civil Procedure, *Sarbo Mussulmani* v *Safar Mandal,* 49 Cal. 997: 68 Ind Cas 730: (1923) A I R 269 (Cal)

The security bond executed in pursuance of an order of the Court under Order 32, Rule 6 (2) or any other Rule or Section of the Code of Civil Procedure must bear a Court Fee Stamp as required by Article 6 of Schedule II of the Court Fees Act, 1870, and they will also be chargeable under the Stamp Act if they are of the kind described in Article 40 or Article 57, but they will not be chargeable under the Stamp Act if they fall under the residuary Article 15, *Reference from the Munsiff, Habigunj,* 53 Cal. 101 F B.: 29 C W N 851: 42 C L J. 5: 1925 A.I.R. 906 (Cal.): 89 I C. 289. See also *J Secretary of the Board of Revenue* v. *Lalta Bakhsh Singh,* 6 Luck 601: 132 I C. 225: 8 O.W N. 116: 1931 A.I.R. 99 (Oudh): 1931 I.R. 241 (Oudh) S B.

A bond in pursuance of an order under s 55 (4), Code of Civil Procedure requiring the judgment-debtor to furnish security to the satisfaction of the Court, that he will within one month apply to be declared an insolvent and that he will appear, when called upon in any proceeding upon the decree in execution of which he had been arrested, comes within Sch II, Art. 6 of the Court Fees Act and not within Art. 57 or Art. 15 of the Indian Stamp Act, *Ghulam Muhammad* v. *Emperor,* 34 P.L R. 132: 141 I C. 301: 1933 A.I R 89 (Lah.): 1933 I R 127 (Lahore).

A security bond executed for setting aside an *ex parte* Small Cause Court decree, need only be stamped under this Article

and not under Art. 15 of the Stamp Act, *Peda Pitchamma* v. *Peda Muneyya*, 68 M.L.J. 466: 41 L.W. 482: 1935 A.I.R. 380 (Mad.): 1935 M.W.N. 57: 155 I.C. 559 F.B.

Bond by a receiver.—Where a bond is executed in favour of the Court by the Receiver whereby he bound himself, and immoveable properties belonging to him were charged for proper discharge of his duties, *held*, that the bond must be stamped both under the Court Fees Act and under Art 40, Schedule I of the Stamp Act as it comes under the definition of a mortgage in section 2 (5) of the Stamp Act and consequently Art 15 is inapplicable, *Amirthammal* v *Madalakaram*, F B (1920) M.W.N. 246: 43 Mad 363 38 M L J 503. 12 L W 537 57 Ind Cas. 184

Where the Code of Civil Procedure does not apply.—A security bond taken by a village Court under s 53 of the Madras Village Courts Act for property received which the executant undertook to restore or pay Rs 40, the question as to stamp having arisen, it was held that under Art 40 of Sch IA of the Indian Stamp Act as amended in Madras the instrument should bear stamp duty as on a Bottomry bond for the amount secured as the Code of Civil Procedure does not apply to village Courts at all and therefore the bond does not fall under Art 6, Sch II of the Court Fees Act, *Cheedella Chenchayya* v *Amureddi Pichireddy*, 1927 M W N 281: 52 M L J 153 100 I C 545 25 L.W. 246. 1927 A I R 377 (Madras)

Procedure and form.—A security bond must be in favour of a person or assistant officer of a Court "A Court is not a judicial person It cannot be sued It cannot take property, and as it cannot take property it cannot assign it"

"The only mode of enforcing it must be by the Court making an order in the suit upon an application to which the sureties are parties, that the property charged be sold, unless before a day named the sureties find the money"

"The new Code of Civil Procedure, that of 1908, provides a special form of security bond to be given during the pendency of an appeal (Appendix G No 3) The form shows that it is intended to be given to some one and not a mere undertaking to the Court, whether that some one should be the other party or the officer of the Court is made clear, but with the form in use it is not likely that the difficulty which surrounds the present case will arise in future," *Raj Raghubir Singh* v *Jai Indra Bahadur Singh*, I.R 46 I A 228: 42 All 158: 18 A L J 263: 22 Bom L R 521 38 M L J 302 55 I C 550

7 Undertaking under section 49 of the Indian Divorce Act		Eight annas [*One rupee in Bombay and Punjab*] [*Twelve annas in U. P.*]

NOTES.

Amendment.—This Article is amended in the Punjab by the Punjab Act VII of 1922; and in Bombay by Bombay Act II of 1932 and in U P by U P Act III of 1932

The Indian Divorce Act is Act IV of 1869.

8 and 9. *Rep by the Repealing and Amending Act, 1891 (XII of 1891)*		
10 Mukhtaranama or Wakalatnama	When presented for the conduct of any one case— (*a*)—to any Civil or Criminal Court other than a High Court or to any Revenue Court, or any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (*b*) and (*c*) of this number	Eight annas [*One rupee in Bengal Madras, Bihar and Orissa and Punjab*] [*Twelve annas in U. P. and C P.*]
	(*b*)—to a Commissioner of Revenue, Circuit, or Customs, or to any officer charged with the executive administration of a Division, not being the Chief Revenue or Executive Authority	One rupee [*One rupee eight annas in Bengal, Madras and U. P*] [*Two rupees in Bihar and Orissa*]
	(*c*)—to a High Court, Chief Commissioner, Board of Revenue, or other Chief Controlling Revenue or Executive Authority	Two rupees [*Three rupees in Bihar and Orissa, Madras and U. P.*] [*Two rupees and eight annas in C. P.*]

NOTES.

Amendment.—This Article has been amended in the Punjab by the Punjab Act VII of 1922 as amended; in Bengal by Bengal Act IV of 1922; in Madras by Madras Act V of 1922 and in Bihar and Orissa by B. & O. Act I of 1922; in U. P by U. P. Act III of 1932 and in C P by C. P. Act XVI of 1935

Scope.—Schedule II, Art. 10 merely requires that when an authority is filed such authority must bear a stamp It does not require that vakalatnama should be filed in criminal cases. *Subda Sontal and another* v. *Emperor*, 1926 A I R 296 (Patna): 7 P.L T. 524: 94 Ind. Cas 714: 1926 Pat. C W.N. 125: 27 Cr.L J. 666

Case.—The word "case" is not defined anywhere, but it must be confined to judicial and quasi-judicial cases as opposed to transactions A power of attorney empowering a person who is neither a vakil nor a certified mukhtear of a Court, to represent another in a Civil Court is governed by Art. 10 of the second Schedule of the Court Fees Act The documents specified in Art 10, Sch II of the Court Fees Act are documents which are intended to be excluded from the definition of a power of attorney in section 2 (21) of the Stamp Act and are not restricted to documents given to and presented by duly certificated Mukhtears and Pleaders under the Legal Practitioners' Act, *Ganpat v Prem Singh*, 15 Ind Cas 122· 108 P W R 1912: 202 P L R 1921

Conduct of any one case.—A document authorizing a pleader to take copies of documents in the records of a collectorate, is properly stamped with a court-fee of 8 annas under Schedule II, Article 10 (a) of the Court Fees Act, *Reference under Stamp Act*, 9 Mad 146 F B See also *Gunamoyee Devi v Nabin Chandra Bandopadhya*, 1 C W N 11.

A vakalatnama authorizing a pleader to receive, during the course of a suit which he has been authorized to conduct, money or document receivable by his client in the ordinary course of such suit, or in consequence of the order or decree of the Court in such suit, does not require a stamp under the Stamp Act, *Anonymous Case*, 3 Cal 767 See also *In the matter of Act XXIII of* 1869, 3 C L R 13 See also *Shambhu Nath* v *Badri Das*, 43 All 393 19 A L J 183 61 I C 410, where the names of the pleaders did not appear in the body of the vakalatnama.

The effect of the Notification No 57, dated the 16th September, 1925 published in the Bihar and Orissa Gazette of the 7th October, 1925 is to dispense with clause (3) of Rule 4, Order 3, C P C and an advocate has now to file an appointment *in writing* as any other legal practitioner in the High Court A power of appointment in writing filed by an advocate requires court-fees as upon a vakalatnama under Art 10, Schedule II of the Court Fees Act, *Sheikh Abdul Gaffar* v. *Mrs F B Downing*, I L R 5 Patna 255. 94 I C 841: 1926 A I R 240 (Patna). 7 P L T 213 1926 Pat C W N 4 See also *In Re Subda Santhal*, 1926 Pat C W N 125, etc cited above.

Where a power of attorney is executed in favour of a person, who is not a certificated mukhtear or pleader under the Legal Practitioners' Act, the documents should be stamped with the stamp as provided for by Article 48 of Schedule I of the Stamp Act and not with a court-fee stamp as provided for by Article 10 of Schedule II of the Court Fees Act, *Permanand* v. *Sat Persad*, 9 Ind Cas 617 F.B.: 8 All.L J. 378: 33 All. 487.

NOTES

Amendment.—This Article is amended in the Punjab by the Punjab Act VII of 1922; and in Bombay by Bombay Act II of 1932 and in U P by U. P Act III of 1932

The Indian Divorce Act is Act IV of 1869.

8 and 9. *Rep by the Repealing and Amending Act, 1891 (XII of 1891)*		
10 Mukhtaranama or Wakalatnama.	When presented for the conduct of any one case— (*a*)—to any Civil or Criminal Court other than a High Court or to any Revenue Court, or any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (*b*) and (*c*) of this number	Eight annas *[One rupee in Bengal Madras, Bihar and Orissa and Punjab]* *[Twelve annas in U. P. and C. P.]*
	(*b*)—to a Commissioner of Revenue, Circuit, or Customs, or to any officer charged with the executive administration of a Division, not being the Chief Revenue or Executive Authority	One rupee. *[One rupee eight annas in Bengal, Madras and U P.]* *[Two rupees in Bihar and Orissa]*
	(*c*)—to a High Court, Chief Commissioner, Board of Revenue, or other Chief Controlling Revenue or Executive Authority	Two rupees. *[Three rupees in Bihar and Orissa, Madras and U. P.]* *[Two rupees and eight annas in C. P.]*

NOTES.

Amendment.—This Article has been amended in the Punjab by the Punjab Act VII of 1922 as amended; in Bengal by Bengal Act IV of 1922, in Madras by Madras Act V of 1922 and in Bihar and Orissa by B & O. Act I of 1922; in U. P by U. P. Act III of 1932 and in C. P. by C. P. Act XVI of 1935

Scope.—Schedule II, Art. 10 merely requires that when an authority is filed such authority must bear a stamp It does not require that vakalatnama should be filed in criminal cases. *Subda Sontal and another v. Emperor, 1926* A I.R. 296 (Patna): 7 P.L.T. 524: 94 Ind. Cas. 714: 1926 Pat. C.W.N. 125: 27 Cr.L J. 666.

A document executed by 36 persons in favour of one of them who was a raiyat, to appear before a certain officer and receive payment of money on behalf of all, is a power of attorney governed by Art 50 (b) of the Stamp Act, *Reference under Stamp Act*, 9 Mad 358 F.B

Memorandum of ... -ance is an authority to pl ... party and is filed by the p ... High Court who is not entitled to practice on the Original Side cannot plead in the High Court by merely putting in a memorandum of appearance unless there has been an appearance by the party in person or by a pleader appointed to act with him Therefore ... *costs of the paper-book.* ... nder the Letters Patent ... (The High Court did not decide whether memorandum of appearance should bear a court-fee of Rs 2), *Rajkumar Pal* v *Janab Ali Mia*, 35 C.W N. 1100: 59 Cal 370 1932 A I.R 1 (Cal) 135 I C. 789.

Consolidation of suits.—Under Art 10, Sch. II, Court Fees Act, a party who engages a pleader has to give a vakalatnama in each case He cannot give one vakalatnam for two cases because he is the appellant in both, nor can he give one vakalatnama for several cases because he engages only one legal practitioner in all the cases But when the Court allows consolidation, it allows the parties to the appeals to treat the consolidated appeals as one, and that being so, the parties may be allowed to join in one vakalatnama, when they apply to have their appeals consolidated Art. 10, Schedule II, Court Fees Act does not stand in the way, *Perumal Nadar and others*, 1928 M W N 271: 54 M.L.J. 595: 1928 A I.R 463 (Madras): 27 L W. 366: 109 I.C. 651 but this case was over-ruled in *In re Maharaja of Venkatagiri*, 53 Mad 248· 58 M L.J 510: 31 L W. 282· 123 I C. 203: 1930 I.R. 475 (Mad), F.B. 1930 A.I.R. 376 (Mad), where it was held that the Court has no inherent power to consolidate appeals in cases disposed of by a single judgment so as to enable the party to pay court-fees on the value of consolidated appeals and file only one vakalatnama, see also *Moosa Soleman Saleji* v. *The Secretary of State*, 32 C.W N. 776: 117 I.C. 692: 1929 A I.R. 135 (Cal); *In re Vaithilinga Pandara Sannadhi Avergal*, 1930 A.I R 381 (Madras): 53 Mad 262: 58 M L J. 521: 31 L.W. 294: 123 I.C 606: 1930 I R. 542 (Mad) F.B.

11. Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree [*or of cross*	(*a*)—to any Civil Court other than a High Court, or to any Revenue Court or Executive Officer	Eight annas. [*One rupee in Punjab. Bihar and Orissa Madras and C. P.*] [*In Bengal one rupee*

objection in Bihar and Orissa] and is presented— [*Memorandum of appeal when the appeal is from an order inclusive an order determining any question under s 47 or s 144 of the Code of Civil Procedure, 1908, and is presented—in Madras*]	other than the High Court or Chief Controlling Revenue or Executive Authority.	*when presented to any Civil Court other than a High Court and rupees two when presented to a Chief Controlling Executive or Revenue Authority*] [*Twelve annas in U P*]
	(*b*)—to a High Court or Chief Commissioner, or other Chief Controlling Executive or Revenue Authority	Two rupees. [*Five rupees in Bengal when to a High Court*] [*Four rupees in Punjab Bihar and Orissa and C P*] [*Three rupees in U P*]

NOTES.

Amendment.—The word "from an order rejecting a plaint or" were omitted by section 155, (Sch 4 of the Code of Civil Procedure, 1908) (Act V of 1908)

The effect of *this amendment is that orders rejecting plaints, etc, are now decrees and the appeals are appeals from decrees and not from orders*

Local Amendments.—The Article has been amended in Bengal by B C Act IV of 1922 for Bengal, in Bihar and Orissa by B. & O Act I of 1922 and in Madras by Madras Act V of 1922; in Punjab Act VII of 1922 as amended, in U P by U P Act III of 1932 and in C P by C P Act XVI of 1935

Application.—This Article does not apply to an appeal filed against an order refusing execution against an alleged partner of a firm against which the decree was passed as such an order has the force of a decree under Or 21, Rule 50 (3) and the court-fees payable should be *ad valorem* under Art 1, Schedule I of the Court Fees Act, *Valliappa Chetty* v *Rungaswamy Naicker*, 8 L B R 300 35 Ind Cas 420

This Article applies to petition of second appeal on the appellate side of Bombay Court, *Ex parte Desai Kalyanarai Hukumatrai*, 4 Bom H C A C 154

N B—In deciding whether an appeal lies as from an order or as from a decree, the language of the statute is to be considered Thus appeals under the Guardians and Wards Act; the Calcutta Municipal Act, the Workman's Compensation Act; the Lunacy Act are all appeals from orders coming within this Article

Scope.—See the case of *In re Ananda Lal Chakrabutty*, 59 Cal 128: 35 C W N. 1103 under s 8 *supra*

An appeal from an order rejecting a plaint does not come under this Article as the order is a decree, *Ganpat* v. *Venkatesh*, 1935 A I R 83 (Nag) F B

Award.—An application to the High Court to set aside an order of the District Court, reversing an order of a Court of first instance directing an award, made without intervention of Court, to be filed, should be treated as an application for a miscellaneous special appeal Such application may be made on a stamp of the value of two rupees under Art. 11, Schedule II of the Court Fees Act, *Lakshman Shivaji* v. *Rama Esu*, 8 Bom H C A C 117.

Under the code of 1908, under s 104, C P C. an appeal lies from an award, although a decree may have been drawn up in an arbitration without the intervention of the Court. See also Article 21 (2) of the second Schedule, C P. C

Award without intervention of Court.—"It cannot be disputed that under cl (f) of sub-section (1) of section 104 of the code, an appeal lies from an order filing or refusing to file an award in an arbitration without the intervention of the Court Such appeal may be preferred at any time within the period prescribed therefor by the Limitation Act"

"The fact that a decree is drawn up on the basis of the judgment which follows the order cannot take away the right of appeal of the party aggrieved by the order No doubt, the decree cannot be assailed by way of appeal, except on the ground that it is in excess of or not in accordance with the award But this does not justify the inference that as soon as the decree is drawn up, the order which is its foundation becomes merged therein and loses its character as an appealable order," *Soudamini Ghosh* v. *Gopal Chandra Ghosh*, 19 C.W N. 948: 21 C.L J 273: 28 I C. 557. See also *Khetra Nath* v. *Ushabala*, 18 C.W.N. 381: *Sabitri* v. *Promoda*, *19 I C. 941.*

Where the appeal is in substance an appeal from an award directing the award to be filed, the right of appeal is not taken away by the fact that a decree has subsequently been passed in accordance with the award.

Under the Code of 1908 an appeal is allowed against an order filing or refusing to file an award but no further appeal is allowed from an order passed on such an application; on the other hand, when an award has been filed and a decree made in accordance with it no appeal lies from such a decree except in so far as it is at variance with the award, *Jagat Pande* v. *Sarwan Pande*, 50 All. 128: 25 All L.J. 741: 103 I.C. 314: 1927 A.I.R. 771 (Allahabad).

For the purposes of court-fees an appeal from an order under s 104 (f) of the Code of Civil Procedure would be governed by Art 11 of the second Schedule of the Court Fees Act, *Agya Singh* v. *Sunder Singh*, 9 Lah 380: 107 I C. 756: 1928 A I R 137 (Lahore) See also *Ram Jawaya* v *Devi Ditta Mal*, 117 P R 1916: 70 P.L R. 1917. 107 P W.R 1916: 34 I C. 192.

The memorandum of appeal against an order directing that an award by an arbitrator appointed without the intervention of the Court be filed, need only be stamped with a court-fee Rs 2, *Ram Autar* v *Ram Samujh*, 6 Luck 703: 9 O W.N 800. 1932 A I R 282 (Oudh) 139 I C 622.

Appeals from orders are specified in s 104 to s 107 and Order 43 of the present Code of Civil Procedure

Civil Procedure Code.—A memorandum of appeal arising out of an application under section 47 of the Code of Civil Procedure is to be stamped with a court-fee of Rs 2 (Rs 5 under the amended Act for Bengal).

N B—See Notification No 1872 J for Bengal published in *Calcutta Gazette*, Part I, page 874, dated June 1, 1921, which says that court-fees are to be realized under this article

See also Notification No 4650 of the Government of India published in the *India Gazette*, dated 14th September, 1889, Part I, pages 807-10

Similar notifications have been issued by the Governments of other provinces See reductions and remissions, *infra*

Lunacy Act.—It is doubtful if an order imposing a fine on a guardian for contumacious conduct has the force of a decree, for the purpose of the Court Fees Act, although the order is executable as a decree, *Mohammad Din* v *Miran Bakhsh*, 36 P L R 179 1934 A I R 853 (Lal). 150 I C 664

Mesne profits—Appeal as to the amount of liability regarding *mesne profits* determined in execution comes under section 244 (c), C P C and therefore the memorandum of appeal only requires a court-fee of 2 rupees, *Itraj Kunwar* v *Bacha Madho Kuar*, 6 O C 86 But see Order 20, Rule 12, C P C

Order 34, Rule 3.—An order refusing to extend time for payment of the decretal amount in a suit for foreclosure and passing a final decree comes within cl (o), Rule 1, Or 43 of the Code of Civil Procedure, *Musst Manjari* v *Surajmal*, 111 I C. 294· 1928 A I R 383 (Nag)

Orders against sureties.—See section 145 of the Code of Civil Procedure (V of 1908) The liability of surety may be enforced in execution against him and he shall, for the purposes of an appeal, be deemed to be party within the meaning of section 47, C P C

Orders passed under section 253, C. P. C. and section 336, C P. C. refusing applications for execution for amounts decreed against sureties not being decrees nor orders having the force of a decree, fall under this Article and *ad valorem* court-fee is not payable, *Lillo Mal* v *Harji Mal*, 72 P R. 1902.

Order refusing to re-admit appeal dismissed for default. —The stamp for an appeal from an order of an appellate Court refusing to re-admit an appeal, dismissed for default, is one of Rs 2 under clause (b) of this Article, *Musst Kanho* v *Sohel Singh*, 10 P R 1883

Order rejecting an application to set aside an ex parte decree.—The memorandum of appeal is to be stamped with a two rupees stamp (if to the High Court) as a summons appeal, *Parbutty* v *Girdharee Lall*, 4 W R Misc 15

Order that party had no locus standi in execution case.—An appeal from an order of the lower appellate Court, declaring that a party who claimed to be in possession of the property taken in execution of a decree to which he was no party and with which he had no concern, had no locus standi in the execution case, is in the nature of a miscellaneous appeal and should bear court-fees as on an ordinary petition, *Mohesh Chandra Bannerjee* v. *Chunder Monee Dabee*, 9 W.R 139

Remand orders.—An order remanding a case under section 562, C P C (Order 41, Rule 23 of Act V of 1908) is not a decree nor an order having the force of a decree within the meaning of this Article, therefore a memorandum of appeal from such order falls under this Article and not under Art 1, Schedule I of this Act and does not require an *ad valorem* court-fee, *Sadiq Mahammad* v. *Gurusahai Ram*, 6 P.R. 1880

But where a suit for possession and *mesne profits* is decided on the merits but remanded so that some further acts may be carried out, *i e*, *enquiry* into the amount of *mesne profits* completed, the appeal is an appeal from a decree and not an appeal from the order of remand.

Thus where the lower appellate Court, in a suit for possession and *mesne profits*, decreed the appeal on the merits but remanded the case for determination of *mesne profits*, *held*, that the appeal from the decision of the lower appellate Court is an appeal from a decree and the memorandum is to be stamped with an *ad valorem* court-fee, *Raghunath Das* v. *Jhari Singh*, 3 Pat L J 99: 45 Ind Cas. 100. See also *Umrao Ali Khan* v. *Abdul Subhan Khan*, 5 All.L J. 645: 28 All.W.N. 40 (case of a suit for partition).

Although the appellate Court which ordered the remand had no jurisdiction to pass the order as made under Order 41,

Rule 23, nevertheless if the learned judge purported to act under Order 41, Rule 23, he must be taken to have remanded the case under Order 41, Rule 23, *Basumati Debi* v *Tarit Basini Das*, 31 C.L.J. 354, *Mahendra Chakrabarti* v *Ram Saran Bandopadhyaya*, 31 C.L.J 357; *Kayem Biswas* v *Bahadur Khan*, 42 C.L.J. 22, *Radha Krishna* v *Kamal Basini*, 35 C.L.J. 345, *Mahammad Ali* v *Karam Ali*, 38 C.W.N. 1202, *Gakur Prasad Har Prasad* v *Ram Kumar*, 44 All 176, *Kulsun-un-Nissa* v *Ram Prasad*, 44 All 492; *Chowdhury Chandrika Singh* v *Mithu Rai*, I.L.R 6 Pat 380

Where the trial court disposed the case finally on the merits but the lower appellate Court remanded the case for rehearing of the whole case, held on appeal by the High Court that as the order of remand as made did not finally determine all or any of the matters in controversy between the parties, it was not a decree within the meaning of s 2 of the Code of Civil Procedure, therefore no appeal lay from the order of remand, *Banka Behary Deb* v *Birendra Nath Datt*, 55 Cal 219

Contra.—The order setting aside the decree of the trial court and directing a retrial of the suit with reference to a certain document "is a decree which reverses the decree of the court of first instance and deprives the plaintiffs of the valuable rights they have acquired thereunder The appeal is consequently, competent, not as an appeal from an order under Order 43, Rule 1, sub-rule (u) but as an appeal from a decree under s 96 of the Code read with sec 100", *Bhairab Chandra Datt and others* v *Kali Kumar Datt and others*, 37 C.L.J 491 (492.

Restitution of property.—An application for *mesne profits* made not by the plaintiff but by the defendants against whom the suit had been dismissed by way of restitution under section 583, C P C (section 144 of Act V of 1908) is one under section 244 (c) of the Code. Such application would be chargeable with court-fees under Art 11, Schedule II of the Court Fees Act and not *ad valorem* court-fees, *Gangadhar Marwari* v. *Lachman Singh*, 11 C.L.J 541. 6 I C 125

An order under section 144, C P C comes under section 47 (1) of the Code Clause (6) of the Notification of the Government of India No 4650, dated the 10th September 1889, applies to appeals from such orders, and a court-fee of rupees two is chargeable, *Madan Mohan Dey* v *Nogendra Nath Dey*, 21 C.W.N 544, 39 I C 640

An application by the judgment-debtor for compensation under section 144, C P C need only be stamped with a court-fee of eight annas, *Gobba* v *Kanchhedilal*, 18 N.L.R 15; 67 Ind Cas 225 (Nagpur) See also *Sayad Hamidalli* v *Anmadalli*, 45 Bom 1137 · 23 Bom L.R 480: 62 I.C 233

Application for restitution under section 144, C. P. C. are

applications in execution, *Sudali Mathu Pillai* v *Sudali Mathu, Pillai and others*, 71 Ind Cas 173: 1923 A.I.R. 1270 (Mad): 17 L W 623, *Kurgodigouda* v. *Ninagangouda*, 41 Bom. 625 An application for restitution is an application in execution under the new Code of Civil Procedure (Act V of 1908) as under the old Code (Act XIV of 1882), *Somasundaram Pillai* v. *Chokkalingam Pillai*, 40 Mad 780

Where mortgaged properties were sold at the instance of a mortgagee-decree-holder and a prior mortgagee B was adjudged to be entitled to a share in the sale proceeds in an appeal filed under section 47, C P C, the mortgagee-decree-holder then withdrew the amount of the sale proceeds on furnishing security The prior mortgagee then applied for interest and damages against the heir of the mortgagee-decree-holder B which was allowed, held on appeal that the case falls under section 47 of the Code of Civil Procedure Therefore the B and O Government Notification No 2576-L A 25 of 1921 directing under section 35 of the Court Fees Act that the fee chargeable on appeals from order under section 47, C. P. C. shall be limited to the amount chargeable under Schedule II, Art 11 of the Court Fees Act applies Therefore the memorandum need only bear a court-fee of Rs 4, *Sital Prosad Singh* v. *Jagdeo Singh*, I L R 4 Patna 294: 1925 A I R. 577 (Patna): 92 I C 474 7 P L T 415 See also *Balmukund* v. *Basanta Kumar*, 3 Pat 371: 1924 Pat C W N. 33: 5 P.L.T. 145: 78 I C. 200 See also *Moti Singh* v. *Court of Wards*, 103 I.C. 657: 1927 A I.R 635 (Lah); *Rahmat Ali Shah* v *Rikhi Kesh*, 107 I.C. 491: 1928 A.I.R 143 (Lahore); *Sant Sahai* v. *Chutai Kurmi*, 1 Luck. 40: 92 I C. 23: 1926 A I R 199 (Oudh). See also the case of *Prag Narain* v. *Kamakhia Singh*, P C.L R 36 I.A. 197: 31 All. 551: 11 Bom L R 1200: 14 C.W.N. 55: 10 C.L J. 257. 6 M L.T. 303: 19 M L J. 599: 13 O C 180. 3 I C 798, which was a decision under sec. 583 of the Code of 1882 (Act XIV of 1882).

Note.—In Madras the question whether an order for restitution is a decree or not does not arise in view of the amendment of this Article by the Madras Amending Act

See **Contra.**—An order under section 144, C. P. C. is not on an application in execution proceedings but is a decree, hence the memorandum is to be stamped with *ad valorem* court-fees, *Baijnath* v. *Balmukund*, 47 All. 78: 22 A.L J. 881: 82 I.C. 321: 1925 A.I.R. 137 (All.).

An appeal from an order of restitution under sec. 144, C. P C. if such an order is not contained in the decree of the appellate Court, is an order which has the force of a decree and, therefore, court-fee payable on the memorandum of appeal is to

calculated under Sch I, Art. 1 of the Court Fees Act, *Gul uhammad and another* v. *Sabz Ali Khan*, 113 I C 270: 1930 .I.R. 24 (Lah.).

An application for restitution consequent on a decree of i appellate Court reversing or modifying the decree appealed :ainst is not ah application to execute the decree, hence does it come under s 47, C P C Therefore *ad valorem* court-fees e payable as an appeal from a decree, *Maung Hla Maung* v. *'a Hnin Dauk*, 8 Rangoon 271: 126 I C 211: 1930 A I R 241 Ran.): 1930 I R 291 (Ran)

An order for restitution of the benefit received under a loan embodied in a decree does not come under this Article and the memorandum of appeal is to bear *ad valorem* court-fees on the amount directed to be restored, *Moyna Bibi* v *Banku Bihary*, 6 C W.N 667

Appeals under Indian Companies Act.—A memorandum of appeal from an order under section 57 of Act VI of 1882 (Indian Companies Act) presented to the High Court must be stamped with court-fee under this Article, *Nawab of Bella Spinning and Weaving Co, Ltd* v *Atmaram*, (1865) P J 214

A memorandum of appeal from an order under section 214 of Act VI of 1882 (Indian Companies Act) is to be stamped under this Article, as such an order is not a decree nor an order having the force of a decree, *Reference under section 28 of Act VII of 1870*, 17 All 238: (1895) 15 All W N 56

Measurement cases.—Petitions of appeals in cases to obtain the order for measurement of lands of tenants may be made on the same stamp as for miscellaneous petitions, *Smith* v. *Nundun Lall*, 6 W R (Act X) 13; but see Article 13 which provides for a fee of Rs Ten in Bengal

But if the petitioner values his relief at a certain amount, then the memorandum of appeal must be stamped *ad valorem* on that amount and not as a miscellaneous appeal, *Oma Churn Biswas* v *Shib Nath Bagchee*, 8 W R 14

12	Caveat	Five rupees.
		[*Ten rupees in Bengal, Bihar and Orissa and Madras*]
		[*In Bombay Five rupees upto Two thousand rupees and Ten rupees exceeding that amount*]
		[*In U. P. Five rupees when the value of the*

	property does not exceed Five thousand rupees], *and Ten rupees above that amount.*

NOTES.

Change in law.—The fee is raised to Ten Rupees in Bengal, Madras and Behar and Orissa, and has been amended in Bombay by Bombay Act II of 1932; in U. P. by U. P. Act III of 1932

A caveat is in the nature of a precautionary measure intended to assure that there shall be no proceedings in the matter of the estate of the deceased without notice to the person who files the caveat It is not necessary where person interested in the estate of the deceased appears upon citation, and a petition by such a party upon whom citation has been issued and who appeared to oppose the grant, is not a caveat and need not be stamped as such, *Bhabatarini Debi* v *Hari Charan Bannerjee*, 20 C W N 787· 26 Ind Cas 38 See also *Chota Lal* v. *Bai Kabubai*, 22 Bom 261 (265).

13 Application under Act No X of 1859, section 26, or Bengal Act No. VI of 1862, section 9, or Bengal Act No VIII of 1869, section 37.	Five rupees [*Ten rupees in Bengal*]

NOTES

Change in law.—Act X of 1859 was repealed by the Bengal Tenancy Act, (VIII of 1885), *see* the reprint of the Act as modified up to 31st May, 1907, published by the Government of Bengal, for those portions of the Lower Provinces to which that Act extends and in the Chota Nagpur Division (except Manbhum and the Tributary Mahals) by the Chota Nagpur Landlord and Tenant Procedure Act, 1879 (Ben. Act. I of 1879), (*see* now Ben Act 6 of 1908), Ben. Code Vol II; in the province of Agra by Act 18 of 1873; and in the Central Provinces, by the Central Provinces Act, 1883 (9 of 1883). Central Provinces Code.

Bengal Act 6 of 1862 was repealed by the Bengal Tenancy Act, 1885 (VIII of 1885), so far as it affected those portions of the Lower Provinces to which that Act extended, and in the Chota Nagpur Division (except Manbhum and the Tributary Mahals) by the Chota Nagpur Landlord and Tenant Procedure Act, 1879 (I of 1879) (*see* now Ben Act VI of 1908), Ben Code Vol II

Bengal Act VIII of 1869 was repealed by the Bengal Tenancy Act 1885 (VIII of 1885)

These sections of the old Acts correspond to section 91 of the Bengal Tenancy Act (Act VIII of 1885 B C) and relate to suits by landlords for measurement of lands held by tenants.

Local Amendment.—The fee of five rupees has been raised to ten rupees by Bengal Act IV of 1922 for Bengal.

14 Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866	Five rupees. *[Ten rupees in Bombay and Bihar and Orissa]* *[Seven rupees eight annas in U. P.]*

NOTES

Change in law.—Art. 14 has been amended in Bombay by Bombay Act II of 1932, in Bihar and Orissa and in U. P.

15 [Rep by Act V of 1908, Schedule 5 which was again repealed by the second Repealing and Amending Act, 17 of 1914, s. 3] [Art. 15 ran as follows. —*"Plaint or memorandum of appeal in a suit for possession of a wife"*]	*Five rupees*
16 [*Rep by Act 6 of 1889, s 18 (1).*] [Art 16 ran as follows·—*"Administration bond"*]	*Eight rupees.*
17 Plaint or memorandum of appeal [*or of cross objection in Bihar and Orissa*] in each of the following suits —	
i. to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court,	Ten rupees *[Fifteen rupees in Bengal, Bihar and Orissa, C. P., U. P. and Madras.]* *[Rupees Ten when amount does not exceed rupees Five hundred—in Bombay]*
ii to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates,	Ten rupees *[Fifteen rupees in Bengal, Bihar and Orissa, C. P., U. P., Madras and in Bombay—rupees fifteen when the amount five*

iii to obtain a declaratory decree where no consequential relief is prayed,		Ten rupees *[Twenty rupees in Bengal, and rupees Fifteen in Bihar and Orissa, Bombay, C. P. and U. P.]*
[(iii) for relief under s 14 of the Religious Endowments Act, 1863, or under s. 91 or s. 92 of of the Code of Civil Procedure, 1908,—in Madras.]		*[Fifty rupees—in Madras.]*
[In Madras— 17A Plaint or memorandum of appeal in a suit—		
(i) to obtain a declaratory decree where no consequential relief is prayed, *(ii) to set aside an award,*	*When the plaint is presented to or the memorandum of appeal is against the decree of—* *(a) District Munsiff's Court or the City Civil Court*	*Fifteen rupees*
(iii) to obtain a declaration that an alleged adoption is invalid or never in fact took place or to obtain a declaration that an adoption is valid.	*a District Court or a Sub-Court*	*Hundred rupees, if the value for the purposes of jurisdiction is less than ten thousand rupees; five hundred rupees if such value is ten thousand rupees or upwards]*
(*iv*) to set aside an award,		Ten rupees *[Fifteen rupees in Bengal, Bihar and Orissa, C P. and U P.]*
[In Bombay— *iv. to set aside alienation*		*Fifteen rupees.*
v to set aside a decree or award]	*When the amount or value of the property does not exceed 500 rupees*	*Ten rupees*
	When the amount or value of the property exceeds 500 rupees.	*Fifteen rupees]*
v. to set aside an adoption;		Ten rupees *[Twenty rupees in Bengal, rupees Fifteen in Bihar and Orissa, Bombay, C. P. and U P]*

ii every other suit where it is not possible to estimate at a money value the subject-matter in dispute, and which is not otherwise provided for by this Act		Ten rupees. [*Fifteen rupees in Bengal, Bihar and Orissa, Bombay, C. P. and U P.*]
[*In Madras — 17B Plaint or memorandum of appeal in every suit where it is not possible to estimate at a money value the subject-matter in dispute and which is not otherwise provided for by this Act*	*When the plaint is presented to or the memorandum of appeal is against the decree of—*	
	A Revenue Court	*Ten rupees*
	A District Munsiff's Court or the City Civil Court	*Fifteen rupees.*
	A District Court or a Sub-Court.	*One hundred rupees*]

NOTES

Local Amendments.—This Article has been amended in Bengal by Bengal Act IV of 1922; in Bombay by Bombay Act II of 1932, in Madras by Madras Act V of 1922; in Bihar and Orissa by B & O Act I of 1922; in U. P. by U. P. Act III of 1932, in C P by C. P Act XVI of 1935

General.—The fixed fees prescribed under this Article are provisional and are liable to be supplanted, in case of selected classes of suits, by a court-fee calculated on what the High Court and the Local Government considered to be a reasonable basis of valuation, *Ganpatrao* v. *Laxmi Bai,* 43 Ind. Cas. 64 (66-67): 15 N L R 24

Art. 17 of the second Schedule was never intended to be applied to a case, where a person, with a definite decree for a particular sum of money against him, seeks to set it aside. The question whether or not a decree is capable of being executed, without payment of a further sum of money by the plaintiff as court-fee, is not a question which affects the method in which the relief in a memorandum of appeal of this character can be valued (The suit was a suit for accounts and the appeal was an appeal from a preliminary decree), *Kanti Chandra Tarafdar* v *Radharaman Sarkar,* (1929) 57 Cal 463: 33 C.W.N. 743: 124 I.C 77: 1929 A.I R 815 (Cal).

Clause I.—Summary decision.—What is a summary decision? The words "summary decision or order" mean a decision "not made in a regular suit or appeal," *Dayachand* v. *Hemchand,* 4 Bom. 515 (521, 522) F.B

"It is the decision of a Court which hears and determines the matter, but does not finally conclude the parties," *Mahtab*

Chand v. *Bacharam Hazra,* 5 B.L.R. 162 (166): 13 W.R. 74 F.B.

The words "summary decision" mean a decision of the Civil Courts not being a decree made in a regular suit or appeal, *Ramdhan Mandal* v. *Rameswar Bhattacharjee,* 2 B.L.R.A.C. 235: 11 W.R. 117.

Claim cases—One Chhatrapat Singh was owner of two pergunnahs. He sold those properties for consideration to Bibi Phul Kumari subject to two mortgages. Bibi Phul Kumari cleared those mortgages and remained in possession. Later on Ghanshyam Misra having obtained a money decree against Chhatrapat attached those properties and advertised them for sale in execution of his decree. *Bibi Phul Kumari (the appellant)* objected to the attachment and applied to the Subordinate Judge of Purnea for removal of the attachment, claiming those properties as her own. Her claim was rejected. She therefore, filed a suit and prayed (a) that the plaintiff's right and possession of the properties be declared (b) that it be declared that the said properties are not liable to be sold in execution of the decree of the defendant (Ghanshyam), and not to execute his said decree against the said properties of the plaintiff. The plaint was stamped with a court-fee of Rs. 10 for declaration on prayer (a) and Rs. 10 for declaration on prayer (b). The Subordinate Judge dismissed the suit as the plaint was insufficiently stamped and the High Court affirmed the decision (31 Cal. 511).

On appeal the Privy Council reversing the decision of the Court below, held: "Their Lordships, however, are satisfied that there is in the statute no general or over-riding reference to value. The terms of sub-section 1 of Article 17 (which they held to apply) contain no reference to value. In like manner the class of suits dealing with arbitration awards is coupled with suits such as that immediately in question, awards may be of the value of Rs. 10 or Rs. 10,00,000, and yet no distinction is made. In short, the statute, for good reason or bad has dealt with certain actions irrespective of value; and the present is one of them" and their Lordships held that Rs. 10 is sufficient. *Phul Kumari* v. *Ghanshyam Misra,* 35 Cal. 202: 12 C.W.N. 169: 7 C.L.J. 36: 35 I.A. 22: 10 Bom. L.R. 1: 5 All. L.J. 10: 17 M.L.J. 618: 2 M.L.T. 506: 14 Bom. L.R. 41. See also *Dildar Fatima* v. *Narain Das,* 11 All. 365: (1889) 9 All W.N. 131; *Chunia* v. *Ramdial,* 1 All. 360; *Gulzari Mal* v. *Jadaun Rai,* 2 All. 63; *Gobind Nath* v. *Gajraj Mati,* 13 All. 389: 11 All.W.N. 139; *Fatima Begum* v. *Sukhram,* 6 All. 341: 4 All. W.N. 113; *Priya Das* v. *Vilayat Khan,* 22 All. 384: (1900) 20 A.W.N. 119; *Manraj Kuari* v. *M. Radha P. Singh,* 6 All. 466; *Vithal Krishna* v. *Bal Krishna Janardan,* 10 Bom. 610 F.B.; *Dondo Sakharam* v. *Govinda Babaji,* 9 Bom. 20. (In this case there was a distinct

prayer for possession, still the Bombay High Court held that Rs 10 is sufficient), *Aga Seik* v *Ngra Pu*, U B.R. (1913) 3rd quarter 181 22 Ind Cas. 676; *Maung Tun Them* v. *Maung Sin*, 1934 A I R 332 (Ran) 12 Ran 670. *Ka Murathi* v. *Kunhamed*, 15 Mad 288, *Lakshmi Amma* v. *Janamajayam Nambiar*, 4 M L J 183, *Hamdin* v *Bhagat Singh*, 12 P.L R. 1902, *Sardar Dial Singh* v *Beli Ram*, 51 P R 1897.

Where an objection is dismissed under Order 21, Rule 58, C P C and the unsuccessful claimant institutes a suit under Order 21, Rule 63, C P C to establish his title to the property, the suit comes under Sch II, Art 17, Cl 1 of the Court Fees Act The fact that the property has been sold makes no difference so long as the plaintiff claims to be in possession and does not ask to be restored to possession or that possession be delivered to him, *Musst Manick and other* v. *Ramjas Agarwala and others*, 3 P L T 832. 70 Ind Cas 332. 1923 A.I.R. 152 (Patna) 1 P L R 51

A prayer to restore an attachment is really to set aside a summary order and hence court-fee of Rs. 10 is to be paid, *Dayachand Nemchand* v *Hemchand Dharamchand*, 4 Bom. 515, *Didar Fatima* v *Narain Das*, 11 All. 365.

See *contra* The test for the purpose of court-fees is the value of the quantum of interest which the plaintiff wishes to establish, *Narayan Singh* v. *Ayyasami Peddi*, 1914 M.W.N. 910.

If there be two suits in respect of separate orders then separate fees must be paid. (Order under Ord 21 Rule 103), *Mudhoram* v. *Messrs G V. Ratan Chand*, 1935 A I.R. 129 (Sind)

Attachment.—Valuation.—A suit to set aside an order in a claim case after removing an attachment on declaration of title and for an injunction comes under Sch. II, Art 17, Cl. I of the Court Fees Act. The valuation of a suit for possession arising out of a claim preferred, is to be valued not on the market value of the land but under s 7, paragraph 5 of the Court Fees Act in accordance with the provisions of s 14 of the Madras Civil Courts Act, *Arunuga Mudaliar* v. *Venkatachela Pillai*, 64 M L J. 568: 144 I.C. 243: 1933 A.I R 439 (Mad.); *Janaki Ammal* v. *Kuheema Umma*, 1935 M.W N. 528: 68 M.L J. 231: 41 L.W. 626: 1935 A I.R. 219 (Mad.).

In *Dwarka Das* v. *Kameshar Prasad*, (1894) 17 All. 69 it was held that the valuation is to be at the market value of the land or the decretal amount whichever is less.

Claim case dismissed for default—Art. 17, Clause 1 of the second Schedule includes the case where the claim preferred is dismissed for default and a suit is brought to set aside the decision, *Satindra Nath* v. *Shiba Prasad*, 26 C.W.N. 126: (1922) A I R. 166 (Cal).

Clause II.—See cases, under Section 7, paragraph iv (c) of this Act, under heading "Land Registration Act."

Clause III.—Section 42 of the Specific Relief Act runs as follows —"Any person entitled to any legal character, or to any right as to a property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may, in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit sue for any further relief

Provided that no Court shall make any declaration where the plaintiff being able to seek further relief than a mere declaration of title, omits to do so

Explanation—A trustee of property is a person interested to deny a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Illustrations (e) and (f) to section 42 of the Specific Relief Act are not exhaustive of the classes of cases in which a reversioner can sue for a declaration under the section, *Y Surayya* v. *Y Subbamma*, 43 Mad 4.

Section 42 of the Specific Relief Act is not exhaustive of the cases in which declaratory decrees can be made, *Veeramacheneni Ramasami* v *Soma Pitchayya*, 43 Mad 410: (1920) M W.N. 393: 58 Ind Cas 585 See also *Robert Fischer* v. *The Secy of State for India in Council*, 22 Mad. 270 P C.

The proviso to section 42 of the Specific Relief Act, forbids a suit for a pure declaration without further relief; but it does not compel a plaintiff to sue for all the reliefs which could possibly be granted or debar him from obtaining a relief which he wants unless at the same time he asks for relief which he does not want. The expression "further relief" in the proviso to section 42 of the Specific Relief Act, means "relief in relation to the legal character or rights as to property which the plaintiff is entitled to and whose title to such character or right the defendant denies or is interested to deny; it must also be relief appropriate to and necessarily consequent to the title asserted," *Jaynarain Sen Ukil* v. *Suchitra Debya*, 33 C L J. 592: 26 C W N. 206

The extreme limit of application of proviso to section 42 is indicated in *Sardar Singhji* v. *Ganpat Singhji*, 14 Bom. 395 and *Srinivasa* v. *Srinivasa*, 16 Mad 31.

The proviso to s. 42 of the Specific Relief Act refers to the position of the plaintiff when he commenced the suit and cannot be treated as taking away a right of suit which had already accrued, *Govinda* v. *Perumdevi*, 12 Mad 136.

The proviso to s 42 of the Specific Relief Act is applicable only to such relief as is appropriate to and consequent on the right asserted, *Karman v Krishnan*, 13 Mad. 324.

Nature of declaratory suits—The nature and history of declaratory suits are discussed in *Deokali Koer* v. *Kedar Nath*, 36 Cal. 704 15 Ind Cas 472. 16 C W.N 838.

Application.—Art 17, cl iii of Sch. II of the Court Fees Act applies only to a memorandum of appeal in a suit to obtain a declaratory decree where no consequential relief is prayed, *Kundun Lal* v *Dulichand* (1931) 54 All. 347. (1932) A.L.J. 45: 140 I C 98; 1932 A I.R 221 (All.).

Evasion of Stamp duty.—Where the main object of the suit fails, the plaintiff is not entitled to turn round and ask for a declaration, *Rutton Monee* v *Brojo Mohun*, 22 W.R. 333.

In *Idol Sri Sri Gokul Nath Jiu* v. *The New Birbhum Coal Co, Ltd*, 80 I C. 589: 27 C W.N 972, the lower Court dismissed the suit because the further relief has not been asked for as required by section 42 of the Specific Relief Act, and the Calcutta High Court held on a reference under section 5 of the Court Fees Act: "It is not in the province of the Court to see whether the suit is properly framed, whether the plaintiff is entitled to the declaration asked for, or what would be the effect if the plaintiff succeeds in obtaining a declaration as prayed for......... The Court has only to see whether it is a memorandum of appeal in a suit to obtain a declaratory decree where no consequential relief has been prayed." The High Court thought it was such a suit.

Attachment.—Where the prayer is simply that the property mentioned at the foot of the plaint, is the joint ancestral property of the plaintiff and not liable for attachment and sale in execution of the decree of defendant No. 4 against defendant No 1 and for any other relief that the Court might see fit to grant, *held*, that the suit was one for declaration only and a court-fee of Rs 10 is sufficient, *Gobinda Nath Tewari* v. *Gajraj Mati*, 13 All. 389. See *The Maharaja of Pittapuram* v. *Srichelikani Venkatarayanim Garu*, 57 M.L J. 260: 1929 M.W.N. 608: 30 L.W. 357: 1930 A I.R. 22 (Mad.): 122 I.C. 526, where it was held that an order declaring a distraint is capable of valuation as no question as to the validity of the distraint was raised, but only question as to the exact amount of rent was raised.

Benami.—A suit for a declaration that the plaintiff is the real owner of a decree obtained by the defendants against a third party and praying for the decree to be transferred to plaintiff, is a suit for mere declaration in which no consequential relief is prayed for, and the latter part of the prayer is a ..

surplusage. The plaint in such a suit should bear only a ten rupees stamp, *Ganeshi Lal* v. *Beni Pershad*, 47 P.L.R. 1911: 1 P R 1911: 22 P.W R 1911: 9 Ind Cas. 673.

Bengal Alluvial Lands Act.—The memorandum of appeal from a decree of a Civil Court on a reference by the Collector is to bear a fixed fee of Rs 20 as an appeal from a declaratory decree, *Basanta Kumar Biswas* v. *Prosonna Kumar Guha*, 58 Cal 710: 35 C.W.N. 181: 133 I.C. 222: 1932 A.I R. 47 (Cal): 1931 I R. 670 (Cal).

Claim for money coupled with a declaration.—Where the plaintiff sued for recovery of money and for a declaration of his right to be first paid out of the sale proceeeds of the defendant's property as equitable mortgagee but the trial Court while giving a decree for money refused the declaration sought for, *held*, that the memorandum of appeal by the plaintiff regarding the declaration sought for but refused need only be stamped with a court-fee of rupees ten only, *Simla Bank* v. *Naripat Rai*, 43 P R 1888

Where the plaintiff sued for a declaration that the defendants were liable to pay certain amounts and for the further declaration that the plaintiffs shall be entitled to recover those amounts when he is compelled to pay the same, it is a suit of a declaratory nature without a consequential relief and a court-fee of Rs 10 is sufficient, although the case may not come under section 42 of the Specific Relief Act, *Sheikh Rafiquddin* v. *Haji Sheikh Asgar Ali*, I L.R. 1 Pat 1· 63 Ind. Cas. 38.

Declarations as regards decrees.—*Decree and deeds, null and void*—A suit in which the only prayer is to have a decree set aside as null and void is a suit for mere declaration without consequential relief and is governed by Art. 17, clause (iii) of the second Schedule of the Court Fees Act, *Srimant Sagorjirao* v *S Smith*, 20 Bom 736. A suit in which the only prayer is to have it declared that a certain decree is ineffectual and inoperative against the plaintiffs, is a suit for a declaratory decree without consequential relief and falls under Art. 17, clause iii of the second Schedule of the Court Fees Act, *Zinnatunnessa Khatun* v. *Girindra Nath Mukherjee*, 30 Cal. 788 This case was followed in *Bagala Sundari Debi* v. *Prosanna Nath Mukherjee*, 21 C.W.N. 375: 35 Ind. Cas 797, where Mr. Justice Fletcher said: "The Court has got to look at and see in each particular case what is the nature of the relief claimed and for that purpose, it must look at the allegations that are contained in the plaint." [In this case the decree sought to be declared as not valid and binding was a purely declaratory decree.] Where the suit is by a person not a party to the bond or the decree, it may properly be regarded as one for declaration only, *Arunachallam*

Chetty v *Rangaswamy Pillai*, 38 Mad. 922 (924): (1925) M W N 118: 28 M L J 117: 17 M L T 154: 28 Ind. Cas. 79 F.B

Decree based on fraud—The plaintiff sued for a declaration that a certain decree being based on fraud shall not affect his rights and for any other relief which the Court might deem fit to grant The Subordinate Judge holding that this was a suit for a declaratory decree with consequential relief, called upon the plaintiff to pay *ad valorem* court-fees and on his failure to pay, rejected the plaint On this the plaintiff appealed *Held*, (i) that the suit as brought was one for declaration only; (ii) this suit is not maintainable without a prayer for consequential relief by way of injunction or otherwise, and (iii) that the Court below ought to have allowed the plaintiff an opportunity to amend the plaint and to include necessary prayers, *Bua Ditta* v *Ladha Mal*, 2 U P L R 37: 54 Ind Cas. 833

See other cases under s 7, (iv) (c), *supra*

Contract during minority of plaintiff—A suit by a person for declaration that a certain instrument is invalid, will not necessarily be a suit for declaration with a consequential relief under section 7 (iv) (c) of the Court Fees Act. It will be otherwise where the party cannot impeach the arrangement effected by the deed without having it cancelled In this case the Karar was entered into by the adult members during the minority of the plaintiff A transaction by the Karnavan of a Tarwad is void as against members not consenting thereto, if it is in excess of the powers of the Karnarvan, *Sankaran Nair* v. *Gopal Menon*, 30 Mad 18: 1 M L T. 412. See other cases under s. 7 (iv) (c) *supra*.

Where the plaintiff is in possession—Where in a suit to avoid a conveyance the plaintiff alleges that she is still in possession of the property, all that she is required to do is to file a suit for declaration that the deed in favour of the defendant is not her deed, and the court-fee is payable under this clause, *Umarannessa Bibi* v *Janurannessa Bibi*, 37 C.L J 499. See also *Saburi Pande* v. *Ramkhelawan Pande*, 72 I.C. 495 (Patna) where the property was in the hands of a manager of a lunatic who since died

Appeal for declaration only.—Where a suit was instituted for a declaration with a consequential relief but the suit was decreed for declaration only and the appeal preferred by the defendants for a declaration only as to their rights, held that the appeal falls under Sch. II, Art 17 and was correctly stamped as one for declaration only, *Neko Tewari* v *Kishen Prasad*, 3 Pat. 640: 80 I C 563: 2 P L R. 1923: 1924 A.I.R. 58 (Patna)

The plaintiff sued for declaration that he is entitled to receive the *charao* of Baidyanathji from the successors of the defendant in future and claimed certain amount as having accrued due to him but the trial Court gave him the amount but refused the declaration prayed for, held on appeal by the plaintiff for the declaration that the memorandum of appeal need only be stamped as for declaration, *Girijanund* v. *Sailajanand*, 23 Cal 645.

Two declarations—Where the plaintiff asked for a declaration and also added a prayer for another declaration which was redundant, then the latter prayer would not convert the suit for declaration into a suit for declaration with a consequential relief, *Mahabir Prasad* v *Shyam Behari Singh*, 3 Pat 795: 80 I C. 655· 1925 A I R. 44 (P.).

A plaint for a declaration that the plaintiff was in possesion as owner was amended by addition of the word 'on account of the fact that the decree in the suit . . . is according to law null and void, illegal, ineffectual, it may be declared, etc' is a plaint for two declarations and court-fees for two declarations are to be paid, *Lakshmi Narain Rai* v *Dip Narain Rai*, 55 All. 274: 1933 A L J 311: 148 I C. 152: 1933 A.I.R 350 (All.).

Government grant.—The court-fees payable in respect of a claim to be declared holder of or entitled to an Ayo, *i e*, a hereditary right to apply to Government for grants of oil-well sites in certain areas known as "Reserves" and to receive such sites from Government, is a suit for a declaration as nowhere in the plaint is anything from which it could be inferred that the plaintiff is to seek a further relief and has omitted to do so The plaintiff claimed in the plaint that he has succeeded to Ma E Kyi's Ayo and that Ma E Kyi could not alienate the enjoyment of her Ayo beyond her life time. It was pointed out by the High Court that if the plaintiff claims the oil works he would be liable to pay *ad valorem* court-fees but such a claim was not in the plaint, *Ma Su Twin* v. *Fatima Bibi and another*, 1926 A.I R. 184 (Rangoon): 98 I.C. 196: 5 Bur.L.J. 107 (F.B.).

Landlord and tenant.—A suit by the tenant plaintiff for a declaration that he is not liable to pay more than the amount of royalty admitted by him to the defendant landlord, is a suit for declaration without any consequential relief. Such a suit does not fall within cl 1 or cl. (c) or cl. iv (f) of section 7 of the Court Fees Act The value of the subject-matter in dispute will be the capitalised value of the difference between the plaintiff's and the defendant's claims, *K Kayrappankutti* v. *Kalliyab Thazathveetil Qutti*, (1924) A I R. 621 (Mad.).

An appeal by a landlord from the decree in a suit for commutation of grain rent into money rent on the ground that the

rate fixed by the lower Courts was too low falls either under Sch II, Art 17, cl iii or under Sch II, Art. 17, cl. vi of the Court Fees Act and must be stamped accordingly. Neither section 7, cl (1) nor cl iv (c) of the Act applies to such a case, *S P Chinna v Veerappa Naidu*, 46 M L.J. 540. (1924) A I R. 623 (Mad)

A suit by a *plaintiff for declaration of his title to a shop* in the possession of a tenant inducted by the original proprietor against a defendant who is not in possession but who only threw obstacles in the way of the plaintiff, is a pure suit for declaration in which no consequential relief such as possession or injunction need be prayed. *Gian Chand v Bhagwan Singh*, 32 P.L R. 745: 135 I C 502. 1932 A I R 97 (Lah) · 1932 I.R. 102 (Lah.).

Joint family property.—In a case where the prayer was: —"That the property detailed below be declared to belong to the joint family and that it be declared and established that the plaintiffs held possession of the said property in partnership with the defendant," the plaint need only be stamped with a court-fee of Rs 10, *Shiva Ram v Narain Das*, (1884) 4 All W.N. 11.

The plaint, in a suit by the son, against his father and his alienees, that the alienations are not binding on him and for his future right to succeed to the zemindary after his father's death, requires a court-fee stamp of Rs. 10 only, *Narayan v. Muttayan*, 7 Mad 134

A suit by a co-parcener of a joint Hindu family for a declaration that a mortgage of joint Hindu family property effected by another coparcener, is not binding on the property mortgaged, is a suit for mere declaration falling under Art. 17, cl iii Sch. II of the Court Fees Act, *Sham Das v. Mahant Churn Das*, 1925 A.I.R. 90 (L.): 78 I C 722.

A suit for a declaration that certain alienations by the father of the minor plaintiffs as manager of the joint family as their guardian, are not binding on them, is a suit really one for cancellation; hence falls under section 7 (iv) (a) of the (Madras) Amended Act, and *ad valorem* court-fees are payable, *Alagon Aiyangar v. Sreenivasa Aiyangar*, 50 M.L.J. 406: 1926 M.W.N. 777: 1925 A.I R. 1248 (M.): 91 I.C. 709.

Alienation by father.—Where the suit was for a declaration that a certain alienation made by the plaintiff's father should not be binding upon the reversionary interest, the plaint is rightly stamped with a court-fee of Rs. 10. If in appeal the same prayer is repeated, the mere fact that the suit is decreed on condition of payment of a sum of money, does not alter its nature and the memorandum is to be stamped with the same amount, *Harbhagwan v Amar Singh*, 83 I.C. 332: 1924 A.I.R. 530 (L.). See also *Hazari Singh v. Piran*, 92 P.R. 1900.

A prayer in effect for a declaration that the mortgage executed by the father is not binding on the share of the plaintiff (son), is one for declaration without a consequential relief, *Secretary of State* v *A R. Lakhama*, 64 M.L.J. 24: 1933 M W N 144: 141 I.C. 80· 37 L.W.: 806: 1933 A.I R. 430 (Mad)

A suit by a son for a declaration that the mortgage executed by the father in favour of the defendant, is not enforceable and the family property is not saleable in execution of the *exparte* decree obtained by the defendant mortgagee, is one for declaration and the plaint is to be stamped accordingly, *Iswar Dayal* v *Amha Kumar*, 1935 A L J 498

A suit for a declaration that the entire family property in the hands of the defendant as the head of the family belongs equally to the plaintiff and the defendant No. 1 and they are unaffected by the several deeds executed by certain deceased member of the family, is a suit for declaration, *Brij Gopal* v. *Suraj Karan, 1932 A L J 466: 141 I.C. 112: 1932 A.I.R.* 560 (All)

Money in Bank.—Where the defendant-appellant does not dispute the amount decreed but filed the appeal in order to set aside the decision that the plaintiff alone is entitled to receive the money, which is lying in a Bank, which the Bank is ready to pay to the rightful owner, a court-fee under Art. 17 (iii) of Sch II is sufficient as a mere declaration is sufficient, *Mt. Uttamo Devi* v *Dina Nath and another*, 1923 A I.R 359 (Lahore): 75 Ind Cas. 774

A suit for a declaration to establish the right of the plaintiff to obtain payment under a cheque negotiated for a valuable consideration, or at any rate for a declaration that the cheque was endorsed to him for valuable consideration, is a suit merely for a declaration as it does not seek to recover money from any of the parties in the suit and cannot end in a decree directing any of the defendants to pay money to the plaintiff, specially when the Bank showed eagerness to pay money to any one establishing his title to get the same, *Giridharilal Ratanlal* v. *Palaniappa Mudali*, 1929 A I.R. 572 (Mad.).

Mortgage.—*A subsequent mortgagee suing on his* mortgage is to pay in respect of a prior mortgage court-fees on the declaration he seeks in respect of the prior mortgage and not on the amount in claim in the prior mortgage, *Iswar Dayal* v. *Anna Saheb*, 1935 A L J 168: 1935 A I.R. 100 (All.).

Property in the custody of Collector.—*Under Court of Wards.*—In the plaint the plaintiff distinctly stated that he lays claim to two subjects, *i e*, to two kinds of property. First, a house in his possession and second, other properties in possession

of the Collector, and their value exceeded Rs 50,000 Those properties being in the possession of the Collector it was not necessary for or allowable to the plaintiff to ask for an injunction He was entitled to ask only for a declaration of title, *Shidappa Venkatarao* v *Rachappa Subbarao*, 36 Bom 628 (638) 14 Bom L R 757 16 Ind Cas. 1005, *Affirmed on appeal by* P C in 43 Bom 507: 24 C W N 33: 29 C L J 452.

Effect of orders under sec 145 of the Code of Criminal Procedure—An order under section 145 of the Code of Criminal Procedure has not the effect of actual dispossession of the unsuccessful party, *Jhumak Kampti* v *Debu Lal Singh*, 22 C.L J 415

Under s 146 of the Code of Criminal Procedure—Suit for declaration of title to the co-trusteeship of a Chatram without asking for possession after an order of attachment under s 146 of the Code of Criminal Procedure which was set aside by the High Court, is maintainable and not barred by s 42 of the Specific Relief Act, *Malaiyya Pillai* v *Thirumalai Perumal Pillai*, 21 M L J 1022 See also *Raja of Venkatagiri* v. *Isakapillai*, 26 Mad 410, where the Madras High Court held that such suit was one for declaration only. See also *The Administration-General of Bengal* v. *Bhagwan Chandra Ray*, 15 C.W.N. 758

In *Panna Lal Biswas* v *Panchu Gnidas*, 26 C.W.N. 432, the Calcutta High Court held: "The suit though framed as a suit for possession of property cannot be treated as such, because possession was not with the defendant but with the Magistrate who is not and cannot be a party to the suit.* * The possession of the Magistrate, no doubt, was that of a stake-holder and during the continuance of the attachment the property was in legal custody which must be held to be for the benefit of the true owners."* * * * "The defendant' possession determined upon the Magistrate's taking possession under attachment."

When an order under s. 146 of the Code of Criminal Procedure has been passed there is no cause of action against the Magistrate as he has acted in the exercise of his statutory powers The suit must be brought against the rival claimant and as he is not in possession, the suit cannot be one for possession but must be for declaration only, *Brojendra Kisore Ray Chaudhury* v. *Sarojini Ray and others*, 20 C.W.N. 481; *Jurawan Singh* v *Ramsarekh Singh*, 12 Patna 261: 14 P.L.T. 113: 1933 A I.R. 224 (Pat.).

But see *Goswami Ranchod Lalji* v. *Sri Giridhariaji*, 20 All. 120, where the Allahabad High Court thought that the suit is a suit for possession

Where a Magistrate passes an order under s. 146 of th

Code of Criminal Procedure, a person claiming the prope need only sue for declaration as the claimants must be conside to be in possession when the suit was instituted. But when Magistrate had interfered with the possession of the defenda because an emergency had arisen and before the suit can filed had ordered that the retention of the sale proceeds unnecessary, he was holding the same on behalf of the defenda and the defendant-appellant must pay *ad valorem* fees calcula on the value of the subject-matter in dispute, *Sakharam others* v *Tukaram and another*, 103 I C 351: 1927 A I.R. (Nagpur)

Stranger put in possession.—When the Magistrate placed a stranger in possession contrary to the provisions s 146 of the Code of Criminal Procedure, the suit is one recovery of possession, *Nissar Ali* v *Adebuddishana*, 16 C.W. 1073: 16 I C 621

Debutter properties.—Where the plaintiff in a suit ins tuted under s 92 C P C, asks for a temporary injunction compel the other side to deposit money in hand in court, it really a prayer for accounts, but the character of the suit not thereby altered and court-fees should be paid under Sch. Art 17 (iii) of the Court Fees Act, *Ramanuja Naidu Alagappa Chettiar*, 47 M L J 656: 85 I.C. 80: 1924 A.I.R. (M.): 20 L.W 716

Where the plaintiff sued for his share of the offerings the temple of Baidyanathji and a further declaration to rece if from the successor in office of the defendant, in future the trial Court allowed the amount but refused the declarati *held*, on appeal by plaintiff, that memorandum of appeal ne only be stamped with a court-fee of Rs 10 for the declarati *Girijanand* v. *Sailajanand*, 23 Cal 645.

Trust property—A person who is not a party to the dec against trust property may sue to have it declared void, inope tive and not capable of execution without asking for a consequential relief and the suit is not governed by section 7 ((c) of the Court Fees Act, *Mt. Nihal Devi and others* v. *Chuni Lal and others*, 73 Ind. Cas 767: 1923 A I.R. (Lahore): 5 L.L.J 357. See also, *Amin Chand* v. *Sant Mu Dhar*, 18 P.R. 1913: 151 P.W.R. 1913: 19 Ind. Cas 219; *Cha Kutty* v. *Chhattu Kutty*, 78 Ind Cas. 118: 1924 A.I. 611 (Mad.): 1924 M. W.N. 210: 19 L.W. 249.

A suit for a declaration to the effect that the propert sought to be sold in execution of the mortgage decree by t mortgagee-decree-holder are properties of the Thakurs *institut* on behalf of Thakurs *who were not parties to the mortgage su* is a suit for declaration without any consequential relief and t

plaint is to be stamped under Art 17, Cl (iii), Sch II of the Court Fees Act (the case of *Sripal Singh* v *Jagdish*, 20 O C. 361 65 I C 980 dist on the ground that there the suit *was by a person who was a party to the decree on the mortgage*), *Sriram* v *Mathura Prasad*, 85 I C 349 1925 A I R 500 (Oudh)

A suit for a mere declaration as to the validity of a Wakfnama is not maintainable against a defendant who claims to hold the properties adversely to the Wakf as his own properties In such a case consequential relief as to joint possession, injunction or the like must be claimed, therefore such a suit does not come under Art 17, Cl (iii), Schedule II of the Court Fees Act, *Shihan* v *Abdul Alim Abed*, 34 C W N. 1129: 53 C L J 91 · 130 I C 369 1930 A I R 787 (Cal). See also *Maulavi Muhammad Fahimul Huq* v. *Jagat Ballav Ghose*, 2 Patna 391 (399, 400)

Reversioners.—The plaint in a suit by reversioner *during the life time of the widow* for declaration that the alienation by her is void and is not binding beyond the life time of the widow, need only be stamped with a court-fee of Rs. 10, *Bakshish Singh* v. *Narain Singh*, 70 P R 1877.

The plaint in a suit for declaration *during the life time of the widow* that the will should not affect the reversionary right of the plaintiff need be stamped with a court-fee of Rs. 10 only, *Hakim* v. *Mussammat Mahtab Kour*, 109 P.R. 1893. See also *Daivachilaya Pillai* v. *Ponnathal*, 18 Mad. 459.

Where the plaintiffs sued as reversioners, after death of the widow, to the estate of B.P. to recover possession of the estate and for declaration that possession by the alienee of the estate from the widow of B, is illegal and wrongful on declaration that the plaintiffs are reversioners of B; *held* by Full Bench that the suit is one for possession only the other prayers being surplusage, and the plaint need only be stamped with court-fees calculated under s. 7 paragraph (v) of the Court Fees Act, *Ram Sumran Parsad* v. *Gobind Das*, 1922, Pat. C W.N. 291: I.L.R. 2 Pat. 125: 3 P.L.T. 704: 68 Ind Cas 700.

The memorandum of an appeal by the defendants arising out of a suit for a declaration that the deed of release by the Hindu widow (5th defendant) is not binding on the plaintiffs-reversioners and for the appointment of a receiver and also wherein it was prayed in the alternative that if the appeal fails then a certain sum of money be given to the appellants, comes under Art 17-A, Schedule II of the Court Fees Act (Madras Amendment) and for the prayer for the appointment of a receiver a separate fee of Rs 15 is payable, *Palaniappa Chettiar and others* v *Settichi and others*, 63 M L.J. 822: (1932) M.W.N. 1324: 36 L W. 828: 141 I.C. 324: 1933 A I R. 10°

(Mad); *Ponnuswami Madar* v. *Secretary of State for India,* 41 L W 702: 68 M L.J. 327: 1935 M.W.N. 455: 1935 A.I.R. 318 (Mad)

Art. 17-A.—(*Madras Amendment*).

In *Perraju* v *Subbarao,* 41 L.W 405: 1935 M.W N 346: 68 M L J 376· 1935 A I R 419 (M) in a suit for partition the plaintiff impleaded different creditors and prayed that his share on partition be given to him free from liability for the debts due to those creditors The High Court held that fixed fee for each of the debt should be put in separately.

A suit for setting aside a decree on a razinama for maintenance comes under Art 17-A as amended in Madras and court-fee is payable accordingly, *Kulandaivelu Nachiar* v. *Ramaswami Pandia,* 51 Mad 664 55 M.L J. 345: 27 L W. 286. 108 I C. 539: 1928 A I R 416 (Mad).

If the plaintiff claims these reliefs which are distinct and independent, the requisite court-fees with regard to each of them must be paid, even if the court-fees have to be paid for the same property twice over, *Aremagiri Mudaliar* v. *Rajambal Ammal,* 68 M L J 280 41 L W 452· 1935 M.W.N. 223: 1935 A I R 313 (Mad)

Under Art 17-A (iii) Court Fees Act, a fee of Rs. 500 is payable in all cases where the value of the suit for the purpose of jurisdiction is over Rs 10,000, *Nagamma* v *Narasimham,* 41 L.W 469: 68 M L J 329· 1935 M W N. 144: 1935 A I R. 279 (Mad.). See *Narpina Veeruma* v. *Vanleatarasamma,* 68 M.L J 280 where the suit was for setting aside an adoption and for declaration as to three wills

Valuation.—In *Rachappa Subrao* v. *Shidappa Venkatarao,* 43 Bom. 507: 24 C.W N. 33: 17 A.L J. 418: 25 M L J. 298. 21 Bom.L R. 489: 50 I.C. 280 P.C, the Judicial Committee of the Privy Council said: "if regard be had to the real as distinct from the imputed value of the property the suit was properly instituted in the Court of the First Class Subordinate Judge and if any part of the fee was payable and paid was a fixed fee under Schedule II of the Act, then the notional value of the property or any part of it could not displace its real value for the purpose of jurisdiction."

A suit for a declaration of the validity of an adoption without any other consequential relief is to be valued under s 12 of the Madras Civil Courts Act on the basis of the market value of the property affected by the sale and not merely of the plaintiff's share or according to the valuation under the Court Fees Act as if it was a suit for possession on declaration of title, sec. 3 of the Suits Valuation Act applies only to particular categories of suits. Section 14 of the Madras Civil Courts Act

will be wholly repealed if rules are framed under sec. 3 of the Suits Valuation Act The High Court proceeded to say: "The general principles deducible for valuation for purposes of jurisdiction where no special method of valuation has been provided by the statute would seem to be (1) that where the subject-matter of a suit is wholly unrelated to anything which can be readily stated in definite money terms, then the plaintiff having to put some money value for the purpose of jurisdiction, must put a more or less arbitrary value, and there being no factors in the case from which the Court can say his valuation is wrong or dishonest, the Court will accept the valuation and (2) where the subject-matter is so related to things which have a real money value that the relief asked for will affect these, then the value of the suit for the purpose of jurisdiction is to be taken at the market value of the property," *Vasireddi Veeramma* v. *Butchayya*, (1926) 50 Mad 646 52 M L J 381: 25 L W. 440: 101 I C 379 1927 A I R 563 (Mad); *In re Ramaswami Asari*, 52 Mad 340 28 L W 660. 113 I C. 363: 1928 A I R 1294 (Mad) The value is to be fixed with reference to the market value of the properties, *Nagamma* v. *Narasimham*, 41 L W 469: 68 M L J 329 1935 M W N 144: 1935 A I.R 279 (Mad.).

The valuation of a suit for declaration in respect of alienations by the widow of the last male holder, is the market value of the property in suit and not a notional value, *Dhanabeggiammal* v *Mari Ammal*, 36 L W. 483: 1932 M W N. 780: 139 I C 471: 1932 A I.R. 671 (Mad.).

Clause IV—Awards.—In suits to set aside summary decisions, as also those dealing with arbitration awards, the amount of court-fees payable on the plaint does not depend on the value of the property, *Bibi Phul Kumari* v. *Ghanshyam Misser*, 35 Cal. 202: 7 C L J. 36: 17 M L.J. 618: 5 All L J. 10: 10 Bom L R. 1: 14 Bur. L R. 41.

A suit to set aside an award by arbitrators is governed by Art. 17, (iv), Schedule II of the Court Fees Act. The valuation should not be arbitrary but actual value of the property in dispute is to be given, *Venkatachellam Pillai* v. *P V. Srinivasa Aiyar*, 75 Ind Cas. 115: (1924) A.I.R. 84 (Madras).

Section 8 of the Court Fees Act being a special provision, relating to awards of compensation under the Land Acquisition Act overrides the general provisions of Art. 17, (iv), Schedule II of the Court Fees Act, *Kesturi Chetty* v. *Deputy Collector, Bellary*, 21 Mad. 269.

A suit for a declaration that an award is invalid and for an injunction, is a suit within section 7 (iv) (c) of the Court Fees Act, *Tayabally Abdul Hussain* v. *Messrs. James Finlay and Co*, 80 I.C. 969 (Sind).

N. B—Appeals against filing of awards made without the intervention of Court fall under s. 104 (f) of the Code of Civil Procedure and are to be stamped as appeals against orders under Sch II, Art 11 of the Court Fees Act.

Art 17, Cl. (iv) of Sch. II does not apply to Land Acquisition proceedings as the decision of the District Judge is a decree and as such *ad valorem* court-ees are payable, *The Secretary of State for India* v *Baij Nath*, 9 O.W.N. 396: 1932 A I R. 224 (Oudh).

Clause V—Adoption.—See cases under section 7, paragraph (iv) Clause (c) Where upon a challenge having been made to the title of the adopted son, he comes to Court with a claim for declaration of his title and recovery of possession of his adoptive father's property, the case comes under s. 7, (iv) (c), *Ugra Mohan* v. *Lachmi Prosad Chaudhuri*, 5 Pat. L J. 341: 56 Ind Cas 422.

The plaintiff sued for a declaration that he was the adopted son of one B, and therefore entitled to his property of which he was already in possession His suit was dismissed by the first Court and then he filed an appeal paying Rs 10 as court-fee on the memorandum of appeal *Held*, that the court-fee payable on the memorandum of appeal was *ad valorem* fee on the value of the property held by the appellant as adopted son and heir of B, *Ganpatrao* v. *Laxmi Bai*, 15 N.L.R. 24: 43 Ind Cas 64; *Amdu and others* v *Pissi*, 120 I C. 408.

A suit for declaration by reversioner that the alleged adoption is invalid affects the title of the adopted boy as title of the adopted person will go if such a declaration is granted, therefore, the plaint must be stamped with *ad valorem* court-fees, *Noksing* v. *Bholu Singh*, 1930 A I.R 73 (Nag.): 123 I.C. 417.

NOTE—In Nagpore the valuation of the subject-matter of suits is calculated according to Notification under section 9 of the Suits Valuation Act *Notification* No. 1641, dated 28th September, 1911 (Nagpore).

The plaintiff sued for a declaration that no adoption took place and even if an adoption had taken place, it was an invalid adoption and stamped the plaint with a court-fee of Rs. 100 under Article 17 Cl. (iii) Sch. II of the Court Fees Act. The amount paid was disputed by the office and on reference the High Court held: "when a plaintiff comes into Court urging that an alleged adoption did not take place and even if it did take place it is invalid, he asks for a relief not merely with regard to adoption to the property which the adopted boy would ac. by means of adoption In other words, the value of the is the value of the property which the adopted boy wo if the adoption was true and valid."

"Whether the plaintiff gets anything at present or not, we must consider the value of the relief as being the loss to which the defendant would be put in case the relief is granted," and the High Court further held that after the amendment of the Court Fees Act in Madras, the plaintiff is not at liberty to put his own valuation and that *ad valorem* court-fees are to be paid at the market value of the property and not as in a suit for possession *In re Ramaswami Asari*, 52 Mad 340: 56 M L J. 107 1928 M W N 660: 28 L W 660 113 I C 363: 1928 A.I R. 1294 (Mad)

A suit to establish an adoption independently of any claim to any property, may be filed on a court-fee of Rs 10 only under this Article *Baji* v *Raghunath*, 1876 P J 142.

The right of a plaintiff to bring a substantive proceeding to set aside an adoption has been recognized by Legislature in Schedule II, Art 17, Clause V of the Court Fees Act and in Art 129, Sch II of the Limitation Act, *Kalova Kom* v. *Padapavalad*, 1 Bom 248

But a suit to set aside a *solenama* and thereby to recover property cannot be brought on plaint affixed with a court-fee of Rs 10 under this Article by framing it as a suit to set aside an adoption, *Bama Soondaree* v *Soorjo Coomar*, 22 W R 338.

Declaration—A suit for a declaration that the deed of adoption executed by the widow (who was alive at the date of suit) does not bind the interest of the plaintiffs as reversioners after the death of the widow or her remarriage, is a suit for declaration and not a suit for annulling adoption, *Ganga Singh* v. *Sher Singh*, 1925 A.I.R 229 (Lahore): 5 Lah 440: 84 I.C 486.

Valuation.—For the purpose of determining the jurisdiction the measure of the valuation is the loss which would accrue to the adopted son if the adoption is declared invalid, *Keshava Sanabhaga* v. *Lakshmi Narayan*, 6 Mad. 192 But in the following cases the Courts have held that the valuation for jurisdiction is the valuation put on the claim by the plaintiff, *Prohlad Chandra Das* v *Dwarka Nath Ghosh*, 37 Cal 860: 14 C.W.N. 929: 6 Ind. Cas. 636: *Bai Machbai* v. *Bai Hirabai*, 35 Bom 264: 13 Bom. L R. 251: 10 Ind. Cas. 816; *Sheo Deni Ram* v *Tulshi Ram*, 15 All. 378: 13 All. W.N. 147

See other cases under s 8 of the Suits Valuation Act, *infra*

The valuation for the purpose of jurisdiction of a suit for a declaration of an alleged adoption, without any further consequential relief, is to be on the basis of the market value of the lands, or houses likely to be affected by such declaration an not either according to plaintiff's pleasure or according to valuation under the Court Fees Act as if it was a suit for po -sion of such lands or houses, *Vasireddi Veeramma* v. *Ma*

N B—Appeals against filing of awards made without the intervention of Court fall under s. 104 (f) of the Code of Civil Procedure and are to be stamped as appeals against orders under Sch II, Art. 11 of the Court Fees Act.

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A suit to establish an adoption independently of any claim to any property, may be filed on a court-fee of Rs 10 only under this Article *Raju v Raghunath*, 1876 P J 142

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Declaration.—A suit for a declaration that the deed of adoption executed by the widow (who was alive at the date of suit) does not bind the interest of the plaintiffs as reversioners after the death of the widow or her remarriage, is a suit for declaration and not a suit for annuling adoption, *Ganga Singh v. Sher Singh*, 1925 A I R. 229 (Lahore): 5 Lah. 440: 84 I.C 496.

Valuation.—For the purpose of determining the jurisdiction the measure of the valuation is the loss which would accrue to the adopted son if the adoption is declared invalid, *Keshava Sanabhaga v. Lakshmi Narayan*, 6 Mad. 192. But in the following cases the Courts have held that the valuation for jurisdiction is the valuation put on the claim by the plaintiff, *Prohlad Chandra Das* v. *Dwarka Nath Ghosh*, 37 Cal. 860: 14 C W.N 929: 6 Ind Cas. 636. *Bai Machbai* v *Bai Hirabai*, 35 Bom 264: 13 Bom L R. 251: 10 Ind Cas 816; *Sheo Deni Ram* v. *Tulshi Ram*, 15 All. 378: 13 All. W.N. 147.

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The valuation for the purpose of jurisdiction of a suit for a declaration of an alleged adoption, without any further consequential relief, is to be on the basis of the market value of lands, or houses likely to be affected by such declaration and not either according to plaintiff's pleasure or according to valuation under the Court Fees Act as if it was a suit for possession of such lands or houses, *Vasireddi Veeramma*

Butchayya & 4 others, 50 Mad. 646: 52 M.L.J. 381: 25 L.W. 440 101 I.C. 379 1927 A.I.R. 563 (Mad.).

Clause VI.—*Where it is not possible to estimate at a money value the subject-matter in dispute*—To bring a case within the expression "where it is not possible to estimate at a money value the subject-matter in dispute" in Art. 17, Cl. (vi) of Schedule II of the Court Fees Act, it must be established that it is not possible even to state approximately a money value for the subject-matter in dispute, *Bunwari Lal* v. *Daya Sunker Misser*, 13 C W N 815 (819): 1 Ind Cas 670: See also *Trinayani Dassi* v *Krishna Lal De*, 39 Cal 906: 17 C W N. 923: 14 Ind. Cas 724, *Kesvarapu Ramakrishna Reddi* v. *Kotta Kota Reddi*, 30 Mad 96 16 M L J 458. 1 M L T 311

Essentials.—A suit in order to fall within this clause must fulfil two essentials: (1) that the subject-matter must be incapable of being estimated at a money-value and (2) it must not be provided for by any other provision of the Act, *Mir Hassan Khan* v *Ahmad Khan*, 29 Punj. L R 322; *Kanji Mal* v. *Panna Lal*, 15 P L R 1916 7 P R 1915: 28 I.C. 262

See also *Bunwari Lal* v *Dayashankar Misser*, 13 C W N. 815. 1 I C 670, *Kailash Chandra Das* v *Narayan Chandra Das*, 59 C L J 447. 152 I C 97: 1934 A I R 786 (Cal.); *Gajendra Nath* v *Sulochana*, 39 C W N 131: 60 C L J 201: 1935 A I R. 338 (Cal); *Hasan Khan* v *Ahmad Khan*, 1935 A.I.R. 30 (Pesh).

Art 17 Cl. (vi) of Sch. II of the Court Fees Act cannot apply to a case where the subject-matter of claim has a money value, though that value cannot be stated at a correct figure at that stage, *Sabir Husain* v *Farzand*, 54 All. 608: 138 I.C. 622: 1932 A L J. 387: 1932 A.I.R 406 (All).

N.B.—The appeal in order that the provisions of this clause may be applicable to it, must arise out of a suit to which the provisions of this clause are applicable. It cannot be made applicable at the appellate stage simply because it is difficult to estimate the money value at that stage

Charitable and religious trusts.—*Public Trust,—Under Section 539 (section 92) C. P. C.* In a suit brought under section 539 C. P. C. (Act XIV of 1882) by three Hindus alleging that a trust had been created for certain charitable and religious purposes by Rani Mahtab Kunwar, that the trustee appointed by her had committed a breach of the trust by alienating a portion of the endowed property and that the heirs of the trustee had made a gift of the trust property in favour of the person through whom the defendants now claim, the plaintiffs prayed that it might be declared that the property was endowed property They further prayed that they should be appointed

Superintendents of the property and that an injunction should be issued to the defendants forbidding them to interfere with the discharge of the plaintiff's duties as Superintendents. They also asked the Court to grant such other reliefs as to the Court might seem proper having regard to the provisions of section 539 of the Code of Civil Procedure (Act XIV of 1882). The Allahabad High Court (*Banerjee & Aikman, JJ*) remarked: 'A suit under that section is brought for the protection and preservation of endowed property, and it is safeguarded by the rule which requires that it must be brought by the Advocate-General himself or with the consent of the Advocate-General or such other officer as the Local Government may appoint in this behalf Instances may often arise in which the trust property is of considerable value If court-fees had to be paid with reference to that value whenever it was found necessary to bring a suit to remove a trustee who had committed a breach of his trust, such court-fees might be prohibitive and might prevent institution of the suit In this case the learned Judge below treats the suit as 'obviously a suit for possession' We are unable to agree with this view of the nature of the prayer in the plaint The plaintiffs seek possession of the property. Although they ask that they may be appointed Superintendents they might never be appointed to that office The Judge might see fit to appoint some other persons as trustees or Superintendents, and no occasion might arise for the plaintiffs taking possession of the property. It might also not be necessary to eject the defendants. If the declaration sought for be made, the defendants might themselves cease to interfere with the property. In our opinion, therefore, the learned Judge below was not right in holding that this was necessarily a suit for possession. The learned Counsel for the respondent cited to us the case of *Delroos Banoo Begum* v *Ashgar Alley Khan* (15 B L R. 167: 23 W.R. 453 P.C.). That was no doubt a suit similar to the one before us in so far that the plaintiff in that suit asked to be appointed *mutawallis*, that in that case there were emoluments attached to the office of the *mutawalli*, and by reason of these emoluments being capable of valuation it was held that the suit was not one in which the subject-matter could not be valued * * * In our judgment the suit framed embraced a claim for a declaratory decree to the effect that the property in suit was endowed property. For that portion of the claim the amount of court-fees was Rs 10. It also embraced a prayer for appointment of the plaintiffs as trustees In our opinion it was impossible to estimate at a money value that prayer in the plaint. Consequently the amount of court-fees payable for that portion of the claim was Rs under Clause VI, Art 17 of the Second Schedule of the Court Fees Act" There was a further prayer for an injunction

Butchayya & 4 others, 50 Mad 646: 52 M.L.J. 381: 25 L.W. 440 101 I C 379: 1927 A.I.R 563 (Mad).

Clause VI.—*Where it is not possible to estimate at a money value the subject-matter in dispute*—To bring a case within the expression "where it is not possible to estimate at a money value the subject-matter in dispute" in Art 17, Cl. (vi) of Schedule II of the Court Fees Act, it must be established that it is not possible even to state approximately a money value for the subject-matter in dispute, *Bunwari Lal* v *Daya Sunker Misser*, 13 C W N 815 (819) 1 Ind Cas 670: See also *Trinayani Dassi* v *Krishna Lal De*, 39 Cal 906 17 C W.N. 923: 14 Ind Cas 724, *Kesvarapu Ramakrishna Reddi* v *Kotta Kota Reddi*, 30 Mad 96· 16 M L J 458: 1 M L T 311.

Essentials.—A suit in order to fall within this clause must fulfil two essentials (1) that the subject-matter must be incapable of being estimated at a money-value and (2) it must not be provided for by any other provision of the Act, *Mir Hassan Khan* v *Ahmad Khan*, 29 Punj. L R 322, *Kanji Mal* v *Panna Lal*, 15 P L R 1916: 7 P R 1915: 28 I.C. 262.

See also *Bunwari Lal* v *Dayashankar Misser*, 13 C.W N. 815. 1 I C 670, *Kailash Chandra Das* v *Narayan Chandra Das*, 59 C L J 447· 152 I C 97: 1934 A I R 786 (Cal); *Gajendra Nath* v *Sulochana*, 39 C W N 131 60 C L J. 201: 1935 A.I R 338 (Cal); *Hasan Khan* v *Ahmad Khan*, 1935 A.I.R. 30 (Pesh).

Art. 17 Cl (vi) of Sch. II of the Court Fees Act cannot apply to a case where the subject-matter of claim has a money value, though that value cannot be stated at a correct figure at that stage, *Sabir Husain* v *Farzand*, 54 All 608: 138 I.C. 622: 1932 A L J. 387 1932 A I R 406 (All).

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Charitable and religious trusts.—*Public Trust,—Under Section 539 (section 92) C. P C.* In a suit brought under section 539 C. P C. (Act XIV of 1882) by three Hindus alleging that a trust had been created for certain charitable and religious purposes by Rani Mahtab Kunwar, that the trustee appointed by her had committed a breach of the trust by alienating a portion of the endowed property and that the heirs of the trustee had made a gift of the trust property in favour of the person through whom the defendants now claim, the plaintiffs prayed that it might be declared that the property was endowed property. They further prayed that they should be appointed

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was separately assesseu and separate court-fees paid on that assessment, *Thakuri and others* v. *Brahma Narain and others*, 19 All 69

The above case was followed in the case of *Giridhar Lal* v. *Raman Lal*, 21 All 200, where the same learned Judge held that the mere fact that the plaintiffs in the suit under section 539 Civil Procedure Code, may ask for an account to be taken from the trustee and that the trustees may be compelled to refund monies alleged to have been misappropriated by them, does not take the case out of the purview of Art. 17, Clause VI Schedule II of the Court Fees Act and render the plaintiff liable to pay *ad valorem* court-fees on that part of the plaint as the prayer for accounts is ancillary to the substantive prayer in the plaint, *i e*, that the trustee may be removed and new trustees appointed in their place and that the properties be vested in them

The Judicial Committee of the Privy Council in *Abdur Rahim* v *Mahomed Barkat Ali*, L R 32 C.W N. 482: 55 Cal 519 at page 530 said: "Their Lordships see no reason to consider that s 92 was intended to enlarge the scope of s 539 by the addition of any relief or remedy against third parties *i e*, strangers to the trust They are aware that the Courts in India have differed considerably on the question whether third parties could or should be made parties to a suit under s. 539, but the general current of decisions was to the effect that even if such third parties could properly be made parties to a suit under s 539 no relief can be granted as against them. In that state of the previous law their Lordships cannot agree that the Legislature intended to include relief against third parties in clause (h) under the general words "further or other relief."

See also the case of *Beli Ram* v. *Ishar Das*, I.L R. 8 Lahore 730: 110 I.C. 264. 1928 A I R 113 (Lah.) where it was held that the plaint in a suit under s 92 of the Code of Civil Procedure to remove the mohant and to appoint a new mohant in his place and the property to be made over to the new mohant and also that a committee may be formed to fulfil the objects of the trust, need only to be stamped under Art. 17, Cl (vi) of the Court Fees Act.

Where the prayers were (1) that the present Mohant may be removed and a new Mohant appointed in his place and (2) that along with the Mohant so appointed a Committee may be formed to fulfil the object of the trust (3) the property of the trust may be made over to the new Mohant and the newly appointed committee and a list of the said property be prepared and (4) a scheme prepared, held that the suit is one under s. 92 C. P. C. and that s. 7 (iv) (c) of the Court Fees Act does not apply. "A suit under section 539 generally involves a

question upon which no pecuniary value can be placed; and it is obvious that this is so, if we look at the effect of such a suit. The judicial person who is in possession of the only property which can have any value is the idol, and if the shebait who is alleged to have neglected his duty and to have embezzled the idol's property is sought to be removed and another manager put in his place, it cannot be said that this is a suit involving the value of any portion of the idol's property. It may be a very good thing for the idol if he succeeds, it cannot therefore be said that the plaintiff is bound to value his relief at any fixed sum." *Ram Rup Das and others* v. *Mohunt Siyaram Das and others*, 14 C W N 932 12 C L J 211 · 7 Ind Cas 92

The Allahabad High Court held that "all the plaintiffs in such a suit can obtain, is a decree appointing a trustee or trustees, declaring what properties are affected by the trust and direct the trustee to bring those properties into possession. If the trustee appointed by the Court is resisted in his attempts to get possession of the trust property he must then bring a suit for possession in the proper Court on payment of the full court-fees for a suit," *Ghazaffer Hussein Khan* v *Yawar Hussain*, 28 All 112: 25 All W N 28: 2 All L J. 591; but if emoluments be attached to the office of a trustee in the endowment then the plaint in the suit to remove the trustee must be stamped with *ad valorem* court-fees, *Delroos Banoo Begum* v *Ashgar Ali Khan*, 23 W R 453: 15 B L R. 167 P.C.

A suit for dismissal of a trustee and for recovery of trust property from the hands of a third party to whom the same property has been improperly alienated is within section 539 C. P C (section 92 of Act V of 1908), *Sajedur Raja Chowdhury* v *Gour Mohun Das Baishnav*, 24 Cal. 418 (426); *Sajedur Raja* v. *Baidyanath Deb*, 20 Cal 397. *Mohiuddin* v. *Sayidduddin*, 20 Cal. 816; *Chintamon Balaji Dev* v. *Dhondo Ganesh Dev*, 15 Bom. 612; *Ghazaffar Hussain Khan* v *Yawar Hussain*, 28 All 112: 25 All. W.N. 28: 2 All. L J. 591; *Subbayya* v. *Krishna*, 14 Mad. 186

In suit for recovery of the office of a trustee and injunction which is substantially valued and the actual possession being with the tenants who are willing to pay rent to the proper trustee, a prayer by the plaintiff for possession is unnecessary. *Ramadoss* v *Hanumantha Rao*, 36 Mad. 364: 21 M.L J. 592: 12 I C. 449

In a suit with the leave of the Collector to remove a Mohunt from the office and delivery of property to the new Mohunt, the plaint need not be stamped with court-fees *ad valorem* on the value of those properties, *Gopi Das* v. *Lal Das*, 97 P.R. 1918 · 47 Ind Cas 983: 173 P.W.R. 1918.

A plaintiff who claims possession of Muth properties

the allegation that the defendant No. 1 has lost tittle to it owing to his marriage, illegal transactions, etc., is to pay Court Fees under s. 7, paragraph v of the Court Fees Act as no distinction could be drawn between a suit by a beneficial owner and a suit for possession as a trustee or as the manager of a religious endowment (inthis case the suit was not under sec. 92, C. P. C.), *Parshottamanand Giri* v. *Mayanand Giri*, 1932 A.L.J. 777: 142 I.C 251: 1932 A I R. 593 (All).

If the dispute be for the right to matwalliship and not the property which is in trust, then the suit is incapable of valuation and comes under Art 17 Cl. 6 of Sch. II to the Court Fees Act. If the office of the matwalli be a salaried office or if material benefits were derived from the enjoyment of the office, then the suit will be capable of monetary valuation, *Sayeed and others* v. *Tafazul Husain*, 1934 A I R 647 (Pat).

A decree for partition of property amounts to a declaration that the property is partible and is not a decree for possession, therefore, if a property included in the preliminary decree for partition is sought to be exempted on the ground that it is *Wakf* property, the memorandum of appeal need not be stamped with *ad valorem* court-fees, *Rikhi Kesh* v. *Mela Ram*, 32 P L R 304: 131 I C. 283: 1931 A.I R. 170 (Lah): 1931 I.R 411 (Lah).

A suit in order to obtain an injunction restraining the defendants from interfering with the service by the plaintiffs of an idol and asking the Court to frame a scheme, so that they and the defendant might be entitled to carry on the service of the idol and to enjoy the emoluments of the office separately and without interference from each other, is in the nature of a partition suit and court-fee *ad valorem* on the value of injunction plus the fixed fee under this Article are to be paid, *Narain Mohan Dev* v. *Mt. Krishna Ballabhi*, 1935 A L J. 295: 1935 A.I.R. 292 (All.).

Effect of rules.—Where the suit is substantially under s 92, C. P. C the court-fee payable is Rs. 50 (according to Madras Amendment Act); the plaintiff cannot be ordered to pay *ad valorem* duty merely because he asks that the defendant has not accounted for a certain sum of money and asks for a temporary injunction directing the defendant to pay the money into Court, *Ramanuj Naidu* v. *Alagappa Chettiar*, 47 M L.J. 656: 85 I.C. 601: 1924 A.I R. 882 (Mad.): 20 L.W. 716

Plaints in suits under s. 92, C. P. C. are in most cases incapable of valuation. The Madras High Court court-fee rules do not except payment of fees in respect of suits under s. 92, C. P. C., *Swaminatha Aiyar* v. *Guruswami Mudaliar*, 105 I.C. 119: 1927 A I.R. 940 (Mad.): 53 M.L.J. 457: 26 L.W. 378

Religious Endowment Act.—In suits under section 14 of the Religious Endowment Act, the plaint is to be stamped with a court-fee of Rs 10, *Veerasami Pillay* v *Chokappa Mudaliar and others*, 11 Mad 149 *Note*, but if it be coupled with a claim for damage then *ad valorem* court-fee on that claim is payable, *Srinivasa* v *Venkata*, 11 Mad 148 (151) Suits under section 14 of the Religious Endowment Act are incapable of valuation, *Muhammad Sirab-ul-Huf* v *Imamuddin*, 10 All 104: (1896) 6 All W N 189

The plaint in a suit to remove the manager of a dharamsala claiming that the institution is a private one and was founded and maintained by the ancestors of the plaintiff and that the plaintiff alone has the power of appointing and dismissing the manager who refuses to leave, requires *ad valorem* court-fees and the suit is not maintainable on a court-fee of Rs 10.

The provisions of s 14 of Act XX of 1863 applies to such a case, *Basawa Singh* v *Sardarni Bhagwan Kaur*, 216 P.L.R 1912 181 P.W.R 1912 17 I.C. 270.

Madras Religious Endowments Act—An application under s. 84 (2) of the Madras Religious Endowments Act, (Act II of 1927) to set aside the decision of the Endowments Board under sub-section (1) of s 84 of the same Act, is to bear court-fees under Art. 17 as amended and not Articles 17-A or 17-B of Sch. II of the amended Court Fees Act and under Article 17; it is Art 17 (1) alone that is applicable

The Board of Commissioners for Hindu Religious Endowments is not a Civil Court under Art. 17 (1) of the Court Fees Act as amended in Madras, *P. A Sundara Aiyar* v. *The Board of Commissioners for Hindu Religious Endowments, Madras*, 52 Mad 389: 56 M L J. 113: 1929 M W N 308: 115 I C. 157. See also *Damodaran* v. *Board of Commissioners for Hindu Religious Endowments, Madras*, (1930) 53 Mad 266: 58 M L J. 494: 31 L W 428: 1930 M W.N. 404: 130 I.C. 741: 1930 A.I.R. 392 (Madras): 1931 I.R 437 (Mad) F.B.

Private Debutter.—Plaints praying for framing of a scheme in respect of a private debutter property and not claiming any other relief is to be stamped under this Article, the parties being already in possession, *Narain Mohan* v. *Krishna Ballavi*, 1935 A L J 295: 1935 A I.R 292 (All).

Other Cases.—In a suit for a declaration that the present Jheer of the Math is not a duly appointed Jheer and that an appointment to the vacant office of Jheer be made by Court, *held*, "the suit is not maintainable as the plaintiffs do not as for a consequential relief they are entitled to ask, *vi* that some duly qualified person be appointed as the head

the math and approved by the Court and that the math and its properties be handed over to the person so appointed, the defendant being ejected therefrom." In this case the defendant was in possession of the property, *Srinivasa Ayyangar* v *Srinivasa Swami*, 16 Mad 31

The plaint in a suit to remove a Karnarvan from the management of the tarwad property is to be stamped with a court-fee of Rs 10 as the claim is incapable of valuation, *Govinda Nambia* v *Krishna Nambia*, 4 Mad. 146: *Narangoli Chirakal Kuntal Rausan* v *Narangoli Chirabai Puttala tha Kumharj Nambiar*, 4 Mad 314, *Krishna* v. *Raman*, 11 Mad 266

The plaintiffs in a representative suit claimed to have an exclusive right to manage certain Debsthanams mentioned in the plaint and to appoint and remove a Dharamakarta for those temples whenever occasion arises They prayed for a declaration accordingly and asked for delivery of possession by defendants Nos. 1 and 2 of all the properties of the suit temples and for payment of certain amounts that may be found due on examination of accounts of the income and expenditure. A Full Bench of the Madras High Court held that there is no market value of the properties which are very ancient institutions: hence, the memorandum of appeal is to be stamped with a court-fee under Sch II, Art 17 (6) of the Court Fees Act, *Raja Gopala Naidu* v *Ramsubramania Aiyar*, 1923 M.W.N 550 (553): 46 Mad. 782: 74 Ind Cas. 198: (1924) A.I.R. 19 (Madras) F B

Where the plaint was under section 92, C. P. C and in it the plaintiff prayed that the defendants should be made to refund *to the trust* the sum of Rs 11,000 at which figure the plaintiff estimated the amount of money misappropriated by the defendants, *held* that as the plaintiff does not claim any beneficial interest in the sum but only says that the trustees should be asked to make good to the trust itself that amount of money and hand over possession of the immovable property, the suit falls under Art. 17, vi of Schedule II of the Court Fees Act, *Sudalimutha Pillai* v. *Peria Sundaram Pillai*, *48 M.L.J. 514: 1925 M.W.N. 104: 87 I.C. 25: 1925 A.I.R. 722* (Mad.).

Where a suit was brought against the matwalli and Imam of a mosque on the ground that the said matwalli has turned a follower of the Mirza of the Quadiri sect, therefore cannot continue to be matwalli and Imam of the mosque which belongs to the Hanafi sect, and prayed that the defendant be declared unfit for the office of the Imam of the Masjid; that he be ejected from the property appertaining to the Masjid, that he

be dismissed from the office of the matwalli *Held*, that since the plaintiffs simply seek the removal of the defendant from the office of the matwalli, which would involve his ejectment from the immoveable properties of which he is in possession as matwalli, full stamp need not be given upon the value of the said property, *Mir Yad Ali* v. *Mouli Mubarak Ali*, 17 P.W.R. 1908: 53 P.R. 1909 2 Ind. Cas. 107 See *Bawa Mangal Das* v. *Mahant Niranjan Das*, 56 P.R. 1895.

Adverse claim.—Where the plaintiff sued for a declaration that he is the *Sajjadanashin* of the two dargas in dispute and for possession of the dargas and the darga properties, *held* that Art. 17 (b) of Sch. II of the Court Fees Act does not apply as the defendants claim adversely to the plaintiff though not adversely to the trust and that *ad valorem* court-fees are payable under section 7 paragraph 5 of the Court Fees Act *Syed Mahamed Gouse* v. *Government*, 1925 M.W.N. 252: 48 M.L.J. 572. 88 I.C. 209 22 L.W. 163: 1925 A.I.R. 804 (Mad.).

Suit for possession of a Kyang—In a suit for possession of a Phongyi Kyang and its site, court-fees are payable under Article 17 (vi) of the Court Fees Act, 1870, *U Pyinnya and another* v. *U Dipa*, 7 Ran 215: 1929 A.I.R. 134 (Rang.): 118 I.C. 609 F.B.

The Kyang cannot be transferred by sale, mortgage or gift and it can, therefore, have no market value in the ordinary acceptance of the term A suit, therefore, by a Hfungyi to recover possession of a Kyang falls under Art. 17, clause vi of Schedule II of the Court Fees Act and the plaint is to bear a court-fee stamp of Rs 10, *V Konna* v. *Einda*, 13 Bur.L.T. 40: 57 Ind. Cas. 953.

Condition in a decree—Removal of.—Where the appellate Court rejected the memorandum of appeal as insufficiently stamped, *held* that an appeal lay as in appeal from a decree and the second apeal relates to a condition in the order of the lower Court that it would not adjudicate on his rights as regards the merits unless he pays full court-fees, the matter is really for removal of a condition and a court-fee of Rs 10, under cl. vi of Art. 17 of the second Schedule need only be paid, *Govinda* v. *Bansilal*, 98 I.C. 663: 1927 A.I.R. 100 (Nagpore).

Mode of enforcing a decree.—A memorandum of appeal filed against the mode of enforcing decree of the lower Court for dissolution of partnership and attaching the decree as a whole, is to be stamped under Article 17 (vi) of Schedule II of the Court Fees Act, *Radha Krishna* v. *Mehtab Mian and others*, 1925 A.I.R. 496 (Lah.): 90 I.C. 629: 26 P.L.R. 645: 7 L.L.J. 364.

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Mode of enforcing a decree.—A memorandum of appeal filed against the mode of enforcing decree of the lower Court for dissolution of partnership and attaching the decree as a whole, is to be stamped under Article 17 (vi) of Schedule II of the Court Fees Act, *Radha Krishna* v. *Mehtab Mian and others*, 1925 A.I.R. 496 (Lah.): 90 I.C 629: 26 P.L.R. 645: 7 L L J. 364

Appeal for expunging remarks from a judgment.—If a Court holds that it had no jurisdiction to try the suit but nevertheless goes on to record certain findings on the merit of the case then these findings are merely *obiter dicta* and an appeal for expunging those findings only are incapable of valuation and are not provided for in the Court Fees Act, therefore the memorandum of appeal need only be stamped under Sch. II, Art. 17 (vi) of the Court Fees Act, *Zafar Ali Shah and others* v. *(Sayed) Amir Shah and others*, 144 I C 620. 1933 A I R. 678 (Lah.).

Interest.—The plaintiffs in whose favour a decree for sale in a suit on a mortgage has been passed allowing interest up to the date fixed for payment of the mortgage money, appealed on the ground that the interest should have been allowed up to the date of realization *Held*, that the proper court-fee payable on the memorandum of appeal was Rs 10 as provided by this clause, *Bhawani Prasad* v *Kutubunnessa Bibee*, 27 All 559· 2 All L J 263· 25 All W N 84. See also *Musst Bhagwant* v *Atma Singh*, 1934 A I.R 32 (Lah.); *Bhag Shah* v *Labha Mal and others*, 148 I C 213; 1933 A I R 941 (Lah) See also other cases at pages 348, 349, *supra*.

Devolution of interest pending suit.—Where the Court decided that the plaint is properly stamped as a plaint in a suit for partition, the fact that during the course of the suit the defendant died and his sons were substituted in his place and that the plaintiff himself sold a portion of the property to others who were made co-plaintiffs, does not convert the suit for partition into a suit for possession requiring *ad valorem* court-fees, *Harihar Prasad Narain Das* v. *Moheswari Prasad Narain Das*, 1925 A I R 47 (P.) : 3 Pat 654: 82 I.C 813.

Receiver—Property in the possession of.—The plaintiff sued for a declaration of his right to the property without asking for recovery of possession. Prior to the institution of this suit, the plaintiff was appointed receiver of the properties in dispute in proceedings for the appointment of a guardian for the last owner who was subsequently murdered. The High Court held that the plaintiff could not be appointed receiver in guardianship proceedings and ordered that the property be handed back to the defendant Nothing appears to have been done under the High Court's order. The plaintiff then had brought his suit. The High Court when the matter again came up to it, *held*, that the posession of the property was, at the time, neither with the defendant nor with the plainiff, the property having been in *custodia legis* and in the hands of an officer of Court, it being of course a mere accident that that officer was the plaintiff himself. The defendant not being in possession the plaintiff could not, as against her, have claimed

s consequential relief an order for delivery and nothing more i required than the revocation of an order of the Court, *'edanayaga Mudaliar v Vedammal*, 27 Mad 591.

Landlord and tenant.—*Madras Land Estate Act*—A memorandum of second appeal by a ryat filed under s. 112 of ie Madras Estates Land Act need only be stamped with a ourt-fee of Rs 15 under Art 17-B of the second Schedule of ie Act as the subject-matter of apeal is incapable of valuation, *'aithilinga Aiyaswami Aiyar v The District Board of Tanjore y its President*, 57 M L J 570. 30 L W. 289: 1930 A I R 43 Mad)

Letters of Administration and Probate.—The court-fee ayable on an appeal from an order by the District Judge refusing rant of Letters of Administration with a copy of the will nnexed, is Rs 10 under Art 17, cl vi of the Court Fees Act s it is impossible to estimate at a money value the subject-matter f appeal, *Miss Eva Mountstephen v Mr Hunter Garnet Orme*, 5 All 448 25 Ind Cas 98.

Moortgage.—A memorandum of appeal against a decree bsolute for redemption on the ground that the mortgage noney has been deposited by the mortgagor after the period ixed for its payment and should not have been received, equires a stamp of Rs 10 under Article 17 (vi) of Schedule II of the Court Fees Act, as the relief sought in appeal cannot e exactly valued Such an appeal does not require a stamp n the amount of the principal money, *Dadnoo* v. *Somenath*, ' N.L.R 41 10 Ind Cas 736

The principle in *Devidas* v. *Ramlal*, 7 N.L.R. 190: 13 nd Cas. 864 would apply to a suit for cancellation of a mortgage decree, but where the decree to be cancelled leaves the lefendant the right and oportunity to obtain another similar lecree on the same mortgage in a properly framed suit, a suit or cancellation of such a decree comes under Art 17, cl vi of Sch. II of the Court Fees Act. *Mahadeo Ganesh Sohni* v. *Sadashiv and Mahadeo*, 78 I.C 437: 1925 A.I R. 66 (Nagpore).

A held a prior and two subsequent mortgages on the same roperties on which S held a second mortgage. S sued on her nortgage and obtained a decree in which the dues on the prior and subsequent mortgages were determined and the decree was lrawn in Form No. 9 A who was made a party to S's suit hen filed an appeal for changing the nature of the decree to Form No 10, Appendix D and paid court-fees of Rs. 15 as he relief was incapable of valuation. The office objected on he ground that if a decree be passed under Form No. 10, A would get all the money due which he w ld not otherwise obtain

if the form of the decree be according to Form No. 9. Th Calcutta High Court held that under the Court Fees Act every advantage the appellants obtain is not taxed and before the Amending Act, 1929, the rights of the mortgagees were not required to be adjudicated in a suit by the puisne mortgagee and as there is no provision in the Court Fees Act, the appeal comes under Art 17, cl vi of Sch. II of the Court Fees Act, hence court-fee paid is sufficient, *Akhil Bandhu Guha* v. *Suradhur Debya Chowdhurani*, 61 Cal 320: 38 C.W.N. 248: 58 C.L.J. 542 1934 A I R 377 (Cal): 148 I.C. 1084.

Where the liability under the mortgage is admitted but the sale question is whether the property should be sold or whether the mortgagee should be foreclosed, the case comes under the clause, *Durga Prasad and another* v. *Sri Niwas Surekha and others*, 151 I C 937· 1934 A.I R. 473 (Patna).

If the dispute in appeal be that the deefndants appellants are not personally liable but are only liable to the extent of the property of the deceased in their hands as heirs and legal representatives of the deceased, then such a case not being provided for elsewhere, it comes under Sch. II, Art. 17, clause vi of the Court Fees Act, *Jagannath Ravji* v. *Laxmibai Anant*, 36 Bom L R 1220 1935 A.I R. 111 (Bom.), *Bulaqui Das* v. *Lal Chand*, 36 P L R 104 1934 A.I.R. 865

Absence of necessary parties.—Where the appellant (defendant) does not appeal against the amount decreed but only against omission of a necessary party, the court-fee payable is Rs 10, *Dadnoo* v. *Somenath*, 7 N.L.R. 31: 10 Ind. Cas. 736: but see *Barakatunnissa Begum* v. *Qamarun-nissa*, 50 Ind Cas 279, where it was held that if the appellant wants to set aside a final decree in a mortgage suit on the ground that necessary persons are not parties to the suit to ... decree the memorandum recovery of possession ... with court-fee calculated *ad v*... the plaintiff was ... amount

... te in proce... In a suit for an injunction and for the appointment of a receiver, no money value can be put upon such a claim or the appointment of a Receiver, as there is no standard for fixing the same, *Manmatha Nath Biswas* v. *Rohilli M... Dassi*, 27 All. 406: 2 All.L J. 84: 25 All.W.N. 6 But if the appointment be asked as a consequenti... to a declaration then *ad valorem* fee is payable, *Dodd...* v. *Sakrava*, 36 Ind Cas. 831.

Registration ... *Chunn*... v. *Brojonath Ray*, appeal from ... stion was whether the defen... was the time when he executed ... ... was a valid d...

...operly framed suit

fee is payable on the valuation of the property comprised in the deed This case was considered in *Jantoo* v *Radhanath Das*, 8 Cal. 515, and *Garth C J* said, 'I have had great doubt about this question But having regard to what appears to be the general opinion of the Judges, and also the inconvenience that would arise, if the stamp fee upon such appeals were to vary according to the nature of the issue raised in each, I think it will be advisable to order that a uniform court-fee of Rs. 10 should be charged in all such cases" See also *Darijendra* v. *Joges Chandra*, 39 C L J 40 (48) "The proper fee payable on a plaint and memorandum of appeal against a decree in a suit to enforce registration of a document is a fixed fee of Rs. 10, and not an *ad valorem* fee upon the value of the property comprised in the document as the suit is one which it was not possible to estimate at a money value, *Sovarimuthu Pillai* v. *Alagiam Pillai*, 25 Mad 103 12 M L J 88, *followed in Ramu Aiyar* v. *Sankara Aiyar*, F B 17 M L J 573. 31 Mad 89: 3 M.L T 73 See *contra*, *Pydal Nambiar* v *Kannan Nambiar*, 12 M.L J 87, where it was held that the suit comes under section 7 (iv) (c) and *ad valorem* court-fee is payable

A suit under section 77 of the Registration Act requires a court-fee stamp of Rs 10, *Mahomed Zakaria* v *Mussammat Fatima*, 21 P R 1895

Suit to direct registration of will—Court-fee is payable under this clause as it is impossible to estimate at a money value the subject-matter of suit, *Ramu Aiyar* v. *Sankara Aiyar*, 31 Mad. 89: 3 M L T 73: 17 M L J 573 F.B.

Rejection of a claim under Madras Forest Act.—An appeal to the District Court from rejection of a claim by a Forest Settlement Officer under clause 2 of section 10 of the Madras Forest Act, 1822, falls under Art. 17, clause 6 of Schedule II and not under Art. 2 (a), second Schedule of the Court Fees Act, *Kamaraja* v. *Secretary of State for India*, 8 Mad. 22.

Restitution of conjugal rights.—For the purposes of the Court Fees Act a suit for restitution of conjugal rights without any declaration, falls within clause VI of Article 17 of the second Schedule of the Court Fees Act as Art. 15 has been repealed and as such suits are incapable of proper valuation, and the proper amount of court-fees chargeable is Rs. 10, *Aisha* v *Fayaz*, 8 All. L J. 889: 11 Ind. Cas. 186 For other cases see page 132, *supra*

Tank-bed.—The bed of a tank is incapable of valuation, hence a suit to eject the defendant from the bed of a tank does not come under s. 7 (v) of the Court Fees Act but comes und Art 17-B (Madras Amendment) of the same Act, *Malikk Pillai* v. *N M. Nagasami Ayyar*, (1934) 67 M.L J. 688

If it be alleged in the plaint that the plaintiff is in possession a tenant-in-common then the case comes under Art. 17-B of :h. II of the Court Fees Act (Madras Amendment), *Secretary* *State* v. *Lakhanna*, 64 M L J 24 1933 M.W N 144: 141 C. 80: 1933 A I R 430 (Mad).

Where sums of money are claimed in appeal—The memo- ndum of an appeal out of a suit for partition on the ground at the appellant should have been given certain sums of money id should have been given certain others sums of money, should ar *ad valorem* court-fees on the amounts in claim in appeal, *ii Dayal* v *Narain Das*, 32 P L R. 854: 1932 A.I R 127 (Lah).

If the appellant in an appeal from a decree in a suit for rtition claims a larger amount of owelty money than that varded in the decree, then he is to pay *ad valorem* court-fees 1 the amount (claimed in excess), *Peshauri Lal* v *Jai Kishen as*, 33 P.L R 12: 142 I C. 829: 1933 I.R 277 (Lah.). See *ukha Nand* v *Mt Shiv Debi*, 1935 A.I.R 14 (Lah).

Contra in *Jyoti Prasad Singh Deo* v *Jogendra Ram Roy*, 1928) 56 Cal 188 32 C W N 1105: 116 I.C. 383: 1928 A I.R. 78 (Cal.) the Calcutta High Court held that the memorandum f appeal is to be stamped under Art 17, cl 6 of Sch II when ie amount in question is owelty money

Suit by plaintiff in joint possession to have his share parti- oned.—See *Tarachand* v *Afzal Beg*, 34 All. 184: 8 A.L.J. 1329: 3 Ind. Cas. 185; *Reoti* v *Lachhman*, 20 A.W.N. 90; *Kirtee hunder Mitter* v. *Anath Nath Deb*, 13 C L R. 253; *Ahamuddin amijuddin* v. *Amiruddin*, 44 Ind. Cas. 216 (Cal.); *Sripati* v. *hridhar*, 15 C.P.L.R. 120; *Har Charan Das* v. *Sukhraj Das*, 2 Ind. Cas 979 (Punjab). See also *Sashi Bhusan Beed* v. *'ai Jatindra Nath Chowdhury and others*, 15 C.L.J. 443: 10 nd. Cas. 463 where the lower appellate Court regarded a suit or partition as one for declaration of title and recovery of ossession and the plaintiff amended the plaint and paid *ad alorem* court-fee on the value of the property in suit but the ligh Court set aside the order and ordered retrial on the plead- igs as they stood before the amendment. This view was taken y Nagpur Court in *Manaji* v. *Sitaram*, (1924) A.I.R 105 Nagpore): 81 I.C. 643; *Bhaddoo* v. *Sadoo*, 20 N.L R. 43: 81 .C. 766: 1924 A.I.R. 86 (Nagpore).

Where the subordinate Judge returned the plaint in suit s being insufficiently stamped, on the ground that, inasmuch is the whole of the property sought to be partitioned does not ppear to have been the property which descended from an ances- or of the parties the suit is something more than a partition suit, nasmuch as the plaintiff's right to share in his property at ll will have to be enquired into in it, *held*, as the only relief

which is sought is the partition of the property which the plaintiff says he is in possession, the court-fee is payable under this clause of this Article, *Mohendra Chandra Ganguli* v. *Ashutosh Ganguli*, 20 Cal. 762 (764, 765). See also *Rajani Kanta Bag* v. *Rajabala Dassi*, 52 Cal. 128: 29 C.W.N. 76: 1925 A.I.R. 320 (C): 85 I.C 898, where it was held that merely because a question as to title is necessary to be determined makes no difference to its being a partition suit.

The correct method of computation of court-fees in suits where partition is claimed by a co-parcener, who is in joint, enjoyment of part of the property at the date of suit, is to determine whether merely a change in the mode of enjoyment is asked for, or whether in reality, the relief of ejectment is claimed Therefore one has to look beneath the mere form and verbiage in the plaint and to arrive at what is its real substance (In this case the plaintiff claimed a right to a share in a former suit and his right having been denied lost the suit), *Bhagwanappa Wani* v *Shiva Wani*, 23 N.L.R. 5: 101 I.C. 770: 1927 A.I.R. 248 (Nagpore)

A suit for partition of the family properties, or in the alternative a delivery of possession of the properties according to the share of the plaintiff,is a suit for partition and court-fee is to be paid under this Article, *Ishwari Prasad* v. *Rai Hari Prasad Lal*, I.L.R. 6 Pat 506: 8 Pat L.T. 34: 106 I.C. 620: 1927 A.I.R. 145 (Pat)

The plaint in a suit for partition and separate possession, by a person claiming to be in joint possession of the property requires a stamp of Rs. 10. The decision as to the amount of court-fees should be based solely on the consideration of the cause of action on which the plaintiff is suing; denial by the defendant that the plaintiff was in joint possession does not alter the character of the suit, *Mongammal* v. *Tolaram*, 6 S.L.R. 72: 16 Ind. Cas. 773. See also *Haji Yusuf* v. *Ghulam Hussain Kassim*, 6 S.L.R. 74: 16 I.C. 771; *Kripal Singh* v. *Sant Singh*, 71 P.R. 1911: 13 Ind. Cas. 305; *Hassan Khan* v. *Ahmad Khan*, 1935 A.I.R. 30 (Pesh.).

Where the plaintiff in a partition suit wants only his share to be separated then the value of the suit is the value of the share, but when the share of all the sharers are partitioned, then the value of the suit is the value of the property sought to be partitioned, *Har Charan Das* v. *Sukhraj Das*, 62 Ind. Cas. 979 (Punjab).

The plaint in a suit for partition where the plaintiff alleges that he is in joint possession of the property, is to be stamped under Art. 17, Cl. vi of the second Schedule of the Court Fees Act, *Nikka* v. *Fazal Dad Khan*, 31 P.L.R. 315: 123 I.C. 525:

1930 A I R 839 (Lah): 1930 I R 445 (Lah.) See also *Musst. Durga Devi* v *Musst Parbati and others,* 141 I C 175: 1933 A I R. 208 (Lah), *Abdul Rahman* v *A B Crisp,* 126 I.C. 643: 1930 A I R 164 (Rang) 1930 I R 325 (Rang.) where it was also held that the defendant-appellant (in this case an auction-purchaser) can file his appeal on a fixed fee if the plaint was presented with a fixed fee See also *Musst Hajran* v *Muhammad Shafi Khan,* 144 I C 614, 1933 A I R 780 (Lah) where the plaintiff was in possession of a portion of the property in dispute

Partition among co-tenants—A suit for partition among co-tenants by a person alleging himself to be already in joint possession as a co-tenant is a suit whose subject-matter is incapable of valuation within the meaning of Art 17, Clause 6 of Schedule II of the Court Fees Act, 1870, *Gill* v. *Varadaraghavayya,* 43 Mad 396 F B : 38 M L J 92: 11 L W 174: (1920) M W N 124 27 M L T. 146: 55 Ind Cas. 517: 1920 A I R 585 (Mad)

Declaration asked for as regards some of the properties—Where the plaintiff in a suit for partition asks for a declaration of title and possession as regards some of the properties *which are claimed by the defendant as his own properties,* he must pay *ad valorem court-fees, Kanhaiya Lal* v. *Baldeo Lal,* 85 I C 538: 1925 A I R 703 (Patna). See also *Balgis Beevi Ammal* v. *Hathija Beevi Ammal,* 147 I.C 300: 1933 A.I.R. 353 (Mad)

Adverse claim—If a relief is claimed in a partition suit against a member of a family on the ground that he is in adverse possession of a particular item, a separate court-fee in regard to it, as on a claim for possession should be paid, *Kandunni Nair* v. *Raman Nair,* 53 Mad 540: 127 I C 128: 1930 A I.R. 597 (Mad)

But in *Annamalai Mu*[illegible] M L J 858: 40 L W. 837: 1934 [illegible] held that a prayer by a [illegible] alienations by the Officia[illegible] one for a declaration co[illegible] Amendment

A denial by the defendant of the title of the plaintiff, does not convert a clear case of partition into one for recovery of possession if the claim for partition be on the footing that the pl[illegible] Cal. 315: 3[illegible] 33 P.L R. 2[illegible] (Lah.).

Where property stands in the name of strangers—The cou[illegible] fees payable should be determined by the allegations in

plaint and not on the footing of what is afterwards decided by the Court Where the separate items stand in the name of different members of the joint family no *ad valorem* court-fee is necessary but where properties stand in the name of the strangers it is necessary for the plaintiffs to displace the title of strangers, and therefore it is obligatory on them to pay *ad valorem* court-fees, *Banku Behary* v *Chatur Pandey*, 5 P.L.T. 665 79 I C 913: 1924 A I R 640 (P): 1924 Pat C.W.N. 210.

Property incapable of partition—After the passing of the preliminary decree in a suit for partition the Court passed an order that a property incapable of partition should be sold. One of the co-sharers appealed, held that the memorandum of appeal need only to be stamped under this clause, *Lachman Das* v. *Bachu Ram*, 100 I C. 17: 1927 A.I R 189 (Lah).

Partition of Moveable property and accounts—The plaint in a suit for partition of joint family business and of immoveable and moveable property and accounts is to be stamped with court-fees under this clause, but separate court-fees are payable on claim for accounts, *Beni Madhab Sarker* v *Govinda Chandra Sarkar*, 22 C W N 669: 46 Ind Cas 105

If in a suit for partition the defendants claim that the plaintiffs as managers received rents of the family property and should account to them for the amounts received by them, then the defendants should value the relief and pay necessary court-fee, *Shaganlal and others* v. *Hariram Tiloomal and others*, 1933 A I R. 304 (Sind) · 147 I C 528 See also *T. R. Manikkam Pillai* v *T S. Murugesam Pillai*, 64 M L J 576: 1933 M.W.N. 631: 37 L W. 748: 143 I C 755: 1933 A.I.R. 431 (Mad).

Partition and accounts—The plaintiff in a suit for partition on declaration that a previous partition is vitiated by fraud and for accounts, is to put an estimate of the amount at which he values the relief for account and pay *ad valorem* on that valuation, *Sita Ram* v. *Hanuman Prasad*, 8 P.L.T. 145: 100 I.C. 632

Partition in Burma—The plaint must be stamped with a court-fee according to the plaintiff's valuation of his share. *Maung Shwe Bon* v. *Maung Pu*, 9 Bur L T. 97: 35 Ind Cas 731.

Partition among Mussulmans—In a suit for partition of inheritance of the joint property of the parties, the lower Courts refused to give one of the defendants, though he asked for it, his share, which was found and admitted to be a third The reason given by the trial Court was that the court-fee paid by the plaintiff was only in respect of his third share and the reason given by the lower appellate Court was that it was not a suit for partition of joint family property among Hindus. The High Court on appeal held that a suit for partition by Hindus

is hardly distinguishable from a suit for partition by Mussalmans and awarded the defendant his share to be ascertained and given to him in execution on payment of the necessary court-fees and expressed an opinion that it is undesirable to drive the parties to a further litigation, *Abdul Kader* v *Bapubhai Valad Sheikh Imam*, 23 Bom 188: 1898 P.J 135, *Haji Yussuf* v *Ghulam Hussain Kasim*, 6 S L R. 74 (note): 16 I.C 771, *Ahammuddin Tamijuddin* v. *Amiruddin*, 44 Ind Cas. 216

Where the plaintiff in a suit for partition of immoveable property is a *Mehomedan* and is not a member of a joint family but is in joint possession the Article applicable is Art 17, Cl 6 as in law her possession of some of the properties is indicative of her joint possession of other properties in which she claims a share; such a suit does not come under section 7, cl (v) of the Court Fees Act, *Kurshit Kathum by Agent, etc* v *Hyder Sahib and others*, 1924 A I.R. 207 (Mad) 75 Ind Cas 93: 1923 M.W.N. 565.

The plaint in a suit for partition where the parties are in joint possession of the property, need only to be stamped under Article 17 (vi) of the Court Fees Act, *Mir Hassan Khan* v. *Ahmad Khan*, 29 Punj L.R 322

A suit for partition among Mehomedans which is really a suit for a share of inheritance, is to be valued both for the purpose of court-fees and for jurisdiction at the amount at which the plaintiff valued his or her share and not at the value of the entire estate Such a suit falls under sec 8 of the Suits Valuation Act and is a suit other than those referred to in the Court Fees Act, 1870, sec 7, paragraphs (v), (vi) and (ix) and paragraph (x), cl (d) and the court-fees are payable *ad valorem* on the valuation of the share, *Ma Fatima and others* v *Momin Bibi and others*, 7 Ran 164 1929 A I R 211 (Ran): 118 I C 122

Appeal.—If the plaintiff in his plaint asserts that he is in joint possession and joint enjoyment of the property then the court-fees payable would be assessed under this clause even if the finding of the trial Court be that the plaintiff was not in possession of the share claimed An appellant appealing from the final decree need not take grounds as to court-fees and the absence of any such ground in the memorandum of appeal would not make him liable to pay higher court-fees (In this case the trial Court had ordered the plaintiff to pay higher court-fees) *Jai Pratap Narain* v *Rabi Pratap Narain*, (1930) 52 All 756: 1930 A L J 984. 124 I C 708 1930 A I R 443 (All) 1930 I R 564 (All)

A memorandum of appeal from a decree directing partition of a wakf property which is not liable to be partitioned need not be *ad valorem* on the valuation of the property as such an

adjudication amounts to a declaration that the property is partible and also as there is no decree for possession, *Rikhikesh* v. *Mela Ram*, 32 P L R 304: 131 I.C 283: 1931 A.I.R. 170 (Lah): 1931 I R 411 (Lah)

Objection to an order to put in a properly stamped petition—In an appeal by the appellants where they objected to the order of the lower Court directing the defendants to put in a properly stamped application if they wanted to have their shares separated, the memorandum is to be stamped with a court-fee of Rs 10 only, *Mussammat Mashkurunnissa* v. *Hashamatullah*, 20 Ind Cas 177

Award by arbitrators without hearing objections—The memorandum of an appeal objecting to the decree of the lower Court on the ground that the award made in the partition suit was made without hearing their objection by the objectors, is to be stamped with a court-fee of Rs 10, *Lila Ram* v. *Mukand Rai*, 1 P L R 1913: 229 P W R 1912: 15 Ind Cas 57.

Liability to partition.—The plaintiff sued for a declaration that certain property is his absolute property and was not liable to partition *Held*, under Art 17 of the Second Schedule of the Court Fees Act (Act VII of 1870) the court-fee payable is one of Rs 10 only, *Sohan Singh* v *Devi Singh*, 115 P.W R 1918: 119 P L R 1918. 81 P R 1918.

Decree in a partition suit.—Decrees in partition suits are to be stamped under the Stamp Act, *Sheikh Rafiuddin* v. *Latif Ahmed*, 14 C W N 1101: 12 C L J 324 7 Ind Cas. 94.

An award or decree directing a partition, is an instrument of partition within the meaning of section 2 (15) of the Stamp Act, 1899, *Tadepatti Reda Nagabhusanam* v. *Tadepatti Pitchayya*, 6 L.W. 448.

If in a suit for partition one of the sharers claim his share to be partitioned off, he need not pay court-fees to make his claim effective The claim is satisfied by the provision in the Indian Stamp Act that the decree as finally drawn up should be stamped as an instrument of partition, *Venkatasubbamma* v. *Ramanadhayya*, 63 M.L J 845 1932 M W.N. 949: 139 I.C. 457: 1932 A I R. 722 (Mad.).

18 Application under section 326 of the Code of Civil Procedure [Second Schedule, Rule 17,] [*or Rule 20 in Madras*] [of the Code of Civil Procedure, 1908].	Ten rupees. [*Rupees Fifteen in Bihar and Orissa and U. P.*] [*In Madras Rs 15 when presented to a District Munsiff's Court or the City Civil Court Rs 100 when presented to a District Court or a Sub Court.*]

[See Bombay Amendment Act]
[One rupee—in C. P.]
[See C. P. Amendment Act for other items]

NOTES.

Alteration.—The reference to section 326 of Act VIII of 1859 has been altered in accordance with section 158 of Act V of 1908 (the Code of Civil Procedure)

Amendments.—This Article has been amended in Bombay by Bombay Act II of 1932; in Bihar and Orissa by B. & O Act I of 1922; in Madras by Madras Act V of 1922; in U P by U. P Act III of 1932 and in C. P by C P Act XVI of 1935

N B—The Second Schedule referred to above deals with applications for filing in Court of agreements to refer to arbitration any difference between the parties thereto

[For Bengal only—*B C Act VII of 1935*

(*1*) *After Article 18 the following Article shall be inserted, namely*:—

18A Application under paragraph 20 of the Second Schedule to the Civil Procedure Code, 1908, to file an arbitration award, and memorandum of appeal from a decree passed under paragraph 21 of the said Schedule,]	*Fifteen rupees*
19 "Agreement in writing stating a question for opinion of the Court under the Code of Civil Procedure, 1908"	Ten rupees [*Rupees Fifteen in Bihar and Orissa, U P and C P*] [*Twenty rupees in Bombay*] [*One hundred rupees in Madras when presented to District Court or a Sub-Court and Rs Fifteen when presented to a District Munsiff's Court or the City Civil Court.*]

NOTES.

Amendment.—The above words were substituted by the Code of Civil Procedure (Act V of 1908), section 155 and the fourth schedule *The original words were "Agreements under sec 328 of the same Code"*

Note—For such agreements see Order 36, Rule 1, C. P. C.

Local Amendments.—This Article has been amended in Bombay by Bombay Act II of 1932, in Bihar and Orissa by

B & O. Act I of 1922 and in Madras by the Madras Act V of 1922, in U P by U. P Act III of 1932; in C. P. by C. P. Act XVI of 1935

20 Every petition under the Indian Divorce Act, except petitions under section 44 of the same Act, and every memorandum of appeal [*or of cross objection in Bihar and Orissa*] under section 55 of the same Act.	Twenty rupees. [*Rupees Thirty in Bihar and Orissa, Bombay and U. P.*]

NOTES.

Local Amendments.—This Article has been amended in Bombay by Bombay Act II of 1932; in Bihar and Orissa by B & O. Act I of 1922; and in U. P. by U. P. Act III of 1932

Indian Divorce Act is Act IV of 1869.

In a suit for divorce a court-fee amounting to Rs. 20 is sufficient even if damages are claimed, *Barkat* v. *Mt. Hakeem Bibi and another*, 12 Lah 266: 32 P.L.R. 252: 130 I.C. 402: 1931 A I R 1 (Lah): 1931 I R 274 (Lah) F.B.

21. Plaint or memorandum of appeal [*or of cross objection in Bihar and Orissa*] under the Parsi Marriage and Divorce Act, 1865.	Twenty rupees. [*Rupees Thirty in Bihar and Orissa, Bombay and U. P.*]

NOTES.

Local Amendments.—This Article has been amended in Bombay by Bombay Act III of 1926: in Bihar and Orissa by B. & O Act I of 1922; and in U P. by U. P Act III of 1932

[For Bengal only—*B C. Act VII of 1935*

(2) After Article 21 the following Article shall be inserted, namely:—

22. Petition— *(a) questioning the election of any person as a Municipal Commissioner, when presented to a District Judge under section 36 of the Bengal Municipal Act, 1932;* *(b) questioning the election of any person as a member of a District Board or Local Board, when presented to any authority appointed under clause (a) of section 138 of the Bengal Local Self-Government Act of 1885 to decide disputes relating to such elections*	*Fifteen rupees."*

NOTES.

[The idea is to settle questions as to court-fees in election disputes.]

Bengal Municipal Act, 1932, in B. C. Act XV of 1932.

Bengal Local Self-Government Act of 1885 is B C. Act VII of 1885.

SCHEDULE III.

[*See section 19-I*]

FORM OF VALUATION (TO BE USED WITH SUCH MODIFICATIONS, IF ANY, AS MAY BE NECESSARY).

IN THE COURT OF

Re Probate of the Will of , (*or Administration*
the Property and Credits of), *deceased.*

solemnly affirm
make oath

I

and say that I am the executor (*or* one of the executors, *or* one of the next-of-kin) of , deceased, and that I have truly set forth in Annexure A to this affidavit all the property and credits of which the above-named deceased died possessed or was entitled to at the time of his death, and which have come, or are likely to come, to my hands.

2 I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct.

3. I further say that the said assets, exclusive only of such last-mentioned items, but inclusive of all rents, interests, dividends and increased values since the date of the death of the said deceased, are under the value of. ..

ANNEXURE A.

VALUATION OF THE MOVEABLE AND IMMOVEABLE PROPERTY OF...... , DECEASED	Rs.	A.	P.
Cash in the house and at the banks, household goods, wearing apparel, books, plate, jewels, etc (*Estate estimated value according to best of Executor's or Administrator's belief*)			
Property in Government securities transferable at the Public Debt Office (*State description and value at the price of the day: also the interest, separately calculating it to the time of making the application*)			
Immoveable property consisting of . (*State description, giving, in the case of houses, the assessed value, if any, and the number of years' assessment the market-value is estimated at, and, in the case of land, the area, the market-value and all rents that have accrued.*)			

	Rs.	A	P
Leasehold property			
(If the deceased held any leases for years determinable, state the number of years' purchase, the Profit rents are estimated to be worth and the value of such, inserting separately arrears due at the date of death, and all rents received or due since that date to the time of making the application.)			
Property in public companies			
(State the particulars and the value calculated at the price of the day, also the interest separately, calculating it to the time of making the application.)			
Policy of Insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills, notes, and other securities for money.			
(State the amount of the whole; also the interest separately, calculating it to the time of making the application.)			
Book debts			
(Other than bad.)			
Stock in trade			
(State the estimated value, if any.)			
Other property not comprised under the foregoing heads			
(State the estimated value, if any.)			
Total			
Deduct amount shown in Annexure B not subject to duty			
NET TOTAL .			

ANNEXURE B

SCHEDULE OF DEBTS, &c.

	Rs.	A.	P
Amount of debts due and owing from the Deceased, payable by law out of the Estate . . .			
Amount of funeral expenses			
Amount of mortgage-incumbrances			
Property held in trust not beneficially or with general power to confer a beneficial interest . . .			
Other property not subject to duty . . .			
TOTAL			

NOTES.

Sch. III has been inserted by the Court Fees Amendment Act (XI of 1890), section 3, the original Sch III ("Enactments Repealed") having since been repealed by Act XIV of 1870

Annexure B—Trusts referred in Annexure B to Schedule III of the Court Fees Act as exempt from duty are trusts not created by the testator's will to take effect after his demise but trusts held not beneficially by the testator during his life time, *Chandrabati Koer* v *Collector of Darbhanga*, 2 Pat.L J 611: 45 Ind Cas 578

Property held in trust.—Means property held in trust by the testator and not the property of which he created a suit, *The Deputy Commissioner of Singhbhoom* v *Jagadish Chandra Deo Dhabal*, 6 Pat.L J 411 62 Ind Cas 573 See *cases under s. 19D supra*

Other property not subject to duty—The words "other property not subject to duty" do not cover a case of a son applying for Letters of Administration in respect of property standing in the name of the deceased father although the same may be ancestral, joint, undivided property. *Per Miller J*—"Ancestral joint family property passing to the applicant is property of the deceased within section 4 of the Probate and Administration Act," *In Re Dasu Manavalla Chetty*, 33 Mad 93: 6 M L T 286: 19 M L J 591: 4 Ind Cas 1064 F B See also *In the goods of Foerschman*, 20 575

AMENDMENT ACTS

A

ASSAM ACT III OF 1932.

[*Received the assent of the Governor on the 29th March, 1932 and of the Governor-General on the 17th April, 1932.*]

The Assam Court Fees (Amendment) Act III, 1932

An Act to amend the Court Fees Act, 1870.

Whereas it is necessary to amend the Court Fees Act, 1870, in its application to Assam in the manner hereinafter appearing; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the Assam Court Fees (Amendment) Act, 1932.

(2) It extends to the whole of Assam.

(3) It shall come into force on the 1st May, 1932.

Amendment of section 7.

2. In section 7 of the Court Fees Act, 1870 (hereinafter referred to as the principal Act)

in sub-clause (a) of clause v for the word 'ten' the word 'twenty' shall be substituted.

Amendment of section 10.

3. For clause ii of section 10 of the principal Act, the following clause shall be substituted, namely:—

ii. In such case—

(*a*) The suit shall be stayed until the additional fee is paid and if the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed; and whether the additional fee is or is not paid.

(*b*) The Court may, if it is of opinion that the estimation has been grossly insufficient, further order that the expenses of the commission, or such portion thereof as the Court may think reasonable, be paid by party in fault to the Government, and the order so made shall have the force and effect of a decree passed by the Court.

B

THE BENGAL COURT FEES AMENDMENT ACTS IV & II OF 1922.

And XI of 1935.

(which came into force from 1st June, 1935.)

An Act to amend the Court Fees Act, 1870, and the Presidency Small Cause Courts Act, 1882, with reference to the scale of court-fees in Bengal.

Whereas it is necessary to revise the scale of court-fees for Bengal, by amendment of the Court Fees Act, 1870, and the Presidency Small Cause Courts Act, 1882, in their application to Bengal, in the manner hereinafter appearing,

It is hereby enacted as follows.—

Short title, extent and commencement.

1. (1) This Act may be called the Bengal Court Fees (Amendment) Act, 1922.

(2) It extends to the whole of Bengal.

(3) It shall come into force on the first day of April, 1922 *(Act XI of 1935 came into force on 1st June 1935)*; *(B C Act XI of 1935 shall remain in force for three years only)*.

Application of Act.

2. The Court Fees Act, 1870, as amended by subsequent legislation, and the Presidency Small Cause Courts Act, 1882, as amended by subsequent legislation, shall be amended, in their application to Bengal, in the manner hereinafter provided

Amendment of section 18 of Act VII of 1870

3. In section 18 of the Court Fees Act, 1870, for the words "a fee of eight annas" the words "a fee of one rupee" shall be substituted

Amendment of section 19

4. In item viii, in section 19 of the same Act for the words "one thousand rupees" the words "two thousand rupees" shall be substituted.

Amendment of Schedule I, Article 1.

5. For Article 1 in the first Schedule to the same Act the following shall be substituted, namely:—

Number.		Proper fee
"1 Plaint, written statement pleading a set-off, or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to Civil or Revenue court except those mentioned in section 3.	When the amount or value of the subject-matter in dispute does not exceed seventry-five rupees, for every five rupees, or part thereof of such amount in value,	Six annas
	and	
	when such amount or value exceeds seventy-five rupees for every five rupees or part thereof, in excess of seventy-five rupees, up to one hundred rupees,	Eight annas
	and	
	when such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one hundred and fifty rupees,	One rupee ten annas.
	when such amount or value exceeds one hundred and fifty rupees, for every ten rupees, or part thereof, to one thousand rupees,	One rupee two annas.
	and	
	when such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to seven thousand five hundred rupees,	Seven rupees eight anna
	and	
	when such amount or value exceeds seven thousand five hundred rupees, for every two hundred and fifty rupees, or part thereof, in excess of seven thousand five hundred	Fifteen rupees.

Number.		Proper fee.
1. Plaint, etc.—contd	rupees, up to ten thousand rupees,	
	and	
	when such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof in excess of ten thousand rupees, up to twenty thousand rupees,	Twenty-two rupees eight annas.
	and	
	when such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to fifty thousand rupees,	Thirty rupees.
	and	
	when such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees,	Thirty-seven rupees eight annas."
	Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be ten thousand rupees"	

Amendment of Schedule I, Article 6

6. In the third column in Article 6 in the same Schedule to the same Act,—

(*a*) for the words "Four annas", opposite clause (*a*) in the second column, the words "Six annas" shall be substituted, and

(*b*) for the words "Eight annas", opposite the first item in clause (*b*) in the second column, the words "Twelve annas" shall be substituted, and for the words "One rupee", opposite the second item in that clause, the words "One rupee eight annas" shall be substituted.

Amendment of Schedule I, Article 11.

7. For the entries above the proviso in the second column, and for the entries in the third column in Article 11 in the same Schedule to the same Act, the following shall be substituted, namely:—

When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees, on such amount or value up to ten thousand rupees, and	Two per centum.
when such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees, and	Three per centum
when such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees, and	Four per centum
when such amount or value exceeds a lakh of rupees, on the portion of such amount or value which is in excess of one lakh of rupees *[then added by B C Act XI of 1935] up to two lakhs and fifty thousand rupees,* *and*	Five per centum.
when such amount or value exceeds two lakhs and fifty thousand rupees, on the portion of such amount or value which is in excess of two lakhs fifty thousand rupees up to three lakhs of rupees, *and*	*Five and a half per centum.*
when such amount or value exceeds three lakhs of rupees, on the portion of such amount or value which is in excess of three lakhs of rupees up to four lakhs of rupees, *and*	*Six per centum.*
when such amount or value exceeds four lakhs of rupees, on the portion of such amount or value which is in excess of four lakhs of rupees up to five lakhs of rupees, *and*	*Six and a half per centum.*
when such amount or value exceeds five lakhs of rupees, on the portion of such amount or value which is in excess of five lakhs of rupees	*Seven per centum.*

Provided that when, after the grant of a certificate under *the Indian Succession Act, 1925*, or any enactment repealed by the Act, or under the Regulation of the Bombay Code, No. VIII of 1827, in respect of any property included in an estate, a grant of probate, a grant of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.

[*Substituted by B C Act XI of 1935 as follows* —

5. (1) For Article 12 of the first Schedule to the said Act the following Article shall be substituted, namely:—

Substitution in Schedule I of new Article 12.

12. Certificate under the Indian Succession Act, 1925.	When the amount or value of any debt or security specified in the certificate under section 374 of the Act exceeds one thousand rupees,	Two per centum on the first ten thousand rupees, three per centum on the next forty thousand rupees, four per centum on the next fifty thousand rupees, and five per centum on the remainder of such amount or value In respect of such portion of the aggregate amount or value as consists of the amount or value of debts or securities so specified, the fee hereinbefore provided in that behalf in this article and
	and when the aggregate amount or value of any debts or securities specified in the certificate and of any debts or securities to which the certificate has been extended under section 376 of the Act exceeds one thousand rupees	three per centum on such portion of the first ten thousand rupees, four and a half per centum on such portion of the next forty thousand rupees, six per centum on such portion of the next fifty thousand rupees, and seven and a half per centum on such portion of the remainder of such aggregate amount or value as consists of the amount or value of

		debts or securities to which the certificate has been extended. *Note.*—(*1*) The amount of a debt is its amount, including interest on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained. (*2*) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.

(2) In the third column of the said Article as amended by sub-section (1)—

(*a*) after the words "five per centum" the following shall be inserted, namely:—

	on the next one lakh and fifty thousand rupees,	five and a half per centum on the next fifty thousand rupees,
		six per centum on the next one lakh of rupees,
		six and a half per centum on the next one lakh of rupees, and seven per centum."

(*b*) after the words "seven and a half per centum" the following shall be inserted, namely:—

		"on such portion of the next one lakh and fifty thousand rupees,
		eight and a quarter per centum on such portion

of the next fifty thousand rupees,
nine per centum on such portion of the next one lakh of rupees,
nine and three-quarters per centum on such portion of the next one lakh of rupees, and
ten and a half per centum."

N.B.—Table of the above rates prepared by the author.

Above one thousand to ten thousand rupees.	2 per cent.; extension 3 per cent.
Above ten thousand to fifty thousand rupees.	3 per cent., aggregate extension 4½ per cent.
About fifty thousand to one lakh of rupees.	4 per cent., aggregate extension 6 per cent.
Above one lakh of rupees to two lakhs and fifty thousand rupees	5 per cent, aggregate extension 7½ per cent
Above two lakhs and fifty thousand rupees to three lakhs of rupees	5½ per cent, aggregate extension 8¼ per cent.
Above three lakhs of rupees up to four lakhs of rupees.	6 per cent, aggregate extension 9 per cent.
Above four lakhs of rupees up to five lakhs of rupees.	6½ per cent.; aggregate extension 9¾ per cent.
Above five lakhs of rupees	7 per cent., aggregate extension 10½ per cent.

Amendment of table of fees rates of *ad valorem.*

9. For the table of rates of *ad valorem* fees leviable on the institution of suits, at the end of the same Schedule to the same Act, the table set forth in the Schedule to this Act shall be substituted

Amendment of Schedule II, Article 1, clauses (*a*), (*b*) and (*c*)

10. In Article 1 in the second Schedule to the same Act—

(*a*) in clause (*a*) after the words 'Municipal Commissioner" in the third entry in the second column the words "or member of a District Board" shall be inserted;

(*b*) (i) for the words "One anna", opposite clause (*a*) in the second column, the words "Two annas" shall be substituted.

(ii) for the words 'Eight annas", opposite clause (*b*) in the second column, the following shall be substituted, namely:—

"In the case of a complaint or charge of an offence presented to a Criminal Court one rupee, and in other cases twelve annas," and

(iii) for the words 'One rupee", opposite clause (*c*) in the second column, the words "One rupee eight annas" shall be substituted

Amendment of Schedule II, Article 1, clause (*d*).

11. For clause (*d*) in the second column in Article 1 in the same Schedule to the same Act, and for the entries opposite that clause in the third column thereof, the following clause and entries shall be substituted, namely:—

"(*d*) (*i*) When presented to the High Court under section 115 of the Code of Civil Procedure, 1908, for revision of an order—	
(*a*) when the value of the suit to which the order relates does not exceed Rs. 1,000	Five rupees
(*b*) when the value of the suit exceeds Rs. 1,000	Ten rupees
(*ii*) when presented to the High Court otherwise than under that section	Two rupees."

Amendment of Schedule II, Article 10.

12. In the third column in Article 10 in the same Schedule to the same Act,—

(1) for the words "Eight annas", opposite clause (*a*) in the second column, the words "One rupee" shall be substituted;

(2) for the words "One rupee", opposite clause (*b*) in the second column, the words "One rupee eight annas" shall be substituted

Amendment of Schedule II, Article 11.

13. For Article 11 in the same Schedule to the same Act the following shall be substituted, namely:—

"11. Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree and is presented.	(*a*) (*i*) to any revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority,	Eight annas.
	(*ii*) to any Civil Court other than a High Court,	One rupee
	(*b*) to a Chief Controlling Executive or Revenue Authority,	Two rupees.
	(*c*) to a High Court.	Five rupees.

Amendment of Schedule II, Article 12.

14. Above the words "Five rupees", where they occur in the third column, opposite Article 12 and 13 in the same Schedule to the same Act, the words "Ten rupees" shall be inserted opposite Article 12 and the bracket between Articles 12 and 13 in the second column shall be omitted.

Amendment of Schedule II, Article 17.

15. (1) The words "Ten rupees" in the third column, opposite Article 17 in the same Schedule to the same Act, and the bracket opposite that Article in the second column *in the same Schedule shall be omitted.*

(2) In the third column in the said Article,—

(*a*) opposite entries i, ii, iv and vi, the words "Fifteen rupees" shall be inserted; and

(*b*) opposite entries iii and v, the words 'Twenty rupees" shall be inserted.

Amendment of section 71 of Act XV of 1882

16. In section 71 of the Presidency Small Cause Courts Act, 1882,—

(1) in clause (*a*) for the words "five hundred rupees" the words "fifty rupees" shall be substituted;

(2) after clause (*a*) the following shall be inserted, namely :—

"(*b*) when the amount or value of the subject-matter exceeds fifty rupees, but does not exceed five hundred rupees—the sum of six rupees four annas and three annas in the rupee on the excess of such amount or value over fifty rupees,"

(3) clause (*b*) shall be renumbered as clause (*c*) and in that clause as renumbered for the words "sixty-two rupees eight annas" the words "ninety rupees ten annas" shall be substituted, and after the words "one anna" the words "six pies" shall be inserted.

Amendment of Schedule II, Article 18

S 6 (B C Act XI of 1935) —In Article 18 of the second Schedule to the said Act, for the words and figures "section 326 of the Code of Civil Procedure the words and figures 'paragraph 17 of the second Schedule to the Code of Civil Procedure, 1908" shall be substitutted.

Exemption of certain probates, letters of administration and certificates

17. Nothing in this Act shall apply to any probate, letters of administration or certificate (*under the Indian Succession Act, 1925 —added by B C. Act XI of 1935*) in respect of which the fee payable under the law for the time being in force has been paid prior to the commencement of this Act, but which have not issued.

For construction of this section see *Thad[illegible] hapiet* v. *The Secretary of State for India*, 39 C.L.J. 209

N.B.—The words 'this Act' includes the [illegible] 1922 and then the B C. Act XI of 1935 which [illegible] Act.

TABLE OF RATES

THE SCHEDULE.

Table of rates of 'ad valorem' fees leviable on the institution of suits.

[*See* sec 9 of the Bengal Court Fees (Amendment) Act, 1922.]

When the amount or value of the subject-matter exceeds	But does not exceed.	Proper fees under Ben. Act IV of 1922 (Bengal).	
Rs	Rs	Rs.	A
	5	0	6
5	10	0	12
10	15	1	2
15	20	1	8
20	25	1	14
25	30	2	4
30	35	2	10
35	40	3	0
40	45	3	6
45	50	3	12
50	55	4	2
55	60	4	8
60	65	4	14
65	70	5	4
70	75	5	10
75	80	6	2
80	85	6	10
85	90	7	2
90	95	7	10
95	100	8	2
100	110	9	12
110	120	11	6
120	130	13	0
130	140	14	10
140	150	16	4
150	160	18	0
160	170	19	2
170	180	20	4
180	190	21	6
190	200	22	8
200	210	23	10
210	220	24	12
220	230	25	14
230	240	27	0
240	250	28	2
250	260	29	4
260	270	30	6
270	280	31	8
280	290	32	10
290	300	33	12
300	310	34	14
310	320	36	0

THE SCHEDULE.

Table of rates of 'ad valorem' fees leviable on the institution of suits.

[*See* sec. 9 of the Bengal Court Fees (Amendment) Act, 1922.]

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fees under Ben. Act IV of 1922 (Bengal).
Rs.	Rs.	Rs. A.
320	330	37 2
330	340	38 4
340	350	39 6
350	360	40 8
360	370	41 10
370	380	42 12
380	390	43 14
390	400	45 0
400	410	46 2
410	420	47 4
420	430	48 6
430	440	49 8
440	450	50 10
450	460	51 12
460	470	52 14
470	480	54 0
480	490	55 2
490	500	56 4
500	510	57 6
510	520	58 8
520	530	59 10
530	540	60 12
540	550	61 14
550	560	63 0
560	570	64 2
570	580	65 4
580	590	66 6
590	600	67 8
600	610	68 10
610	620	69 12
620	630	70 14
630	640	72 0
640	650	73 2
650	660	74 4
660	670	75 6
670	680	76 8
680	690	77 10
690	700	78 12
700	710	79 14
710	720	81 0
720	730	82 2
730	740	83 4
740	750	84 6
750	760	85 8
760	770	86 10
770	780	87 12

THE SCHEDULE.

Table of rates of 'ad valorem' fees leviable on the institution of suits.

[*See* sec 9 of the Bengal Court Fees (Amendment) Act, 1922.]

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fees under Ben. Act IV of 1922 (Bengal).
Rs.	Rs.	Rs. A.
780	790	88 14
790	800	90 0
800	810	91 2
810	820	92 4
820	830	93 6
830	840	94 8
840	850	95 10
850	860	96 12
860	870	97 14
870	880	99 0
880	890	100 2
890	900	101 4
900	910	102 6
910	920	103 8
920	930	104 10
930	940	105 12
940	950	106 14
950	960	108 0
960	970	109 2
970	980	110 4
980	990	111 6
990	1,000	112 8
1,000	1,100	120 0
1,100	1,200	127 8
1,200	1,300	135 0
1,300	1,400	142 8
1,400	1,500	150 0
1,500	1,600	157 8
1,600	1,700	165 0
1,700	1,800	172 8
1,800	1,900	180 0
1,900	2,000	187 8
2,000	2,100	195 0
2,100	2,200	202 8
2,200	2,300	210 0
2,300	2,400	217 8
2,400	2,500	225 0
2,500	2,600	232 8
2,600	2,700	240 0
2,700	2,800	247 8
2,800	2,900	255 0
2,900	3,000	262 8
3,000	3,100	270 0
3,100	3,200	277 8
3,200	3,300	285 0
3,300	3,400	292 8

The Schedule.

Table of rates of 'ad valorem' fees leviable on the Institution of suits.

[*See* section 9 of the Bengal Court-fees (Amendment) Act, 1922.]

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fees under Ben. Act IV of 1922 (Bengal).	
Rs.	Rs.	Rs.	A.
3,400	3,500	300	0
3,500	3,600	307	8
3,600	3,700	315	0
3,700	3,800	322	8
3,800	3,900	330	0
3,900	4,000	337	8
4,000	4,100	345	0
4 100	4,200	352	8
4,200	4,300	360	0
4,300	4,400	367	8
4,400	4,500	375	0
4,500	4,600	382	8
4,600	4,700	390	0
4,700	4,800	397	8
4,800	4,900	405	0
4,900	5,000	412	8
5,000	5,100	420	0
5,100	5,200	427	8
5,200	5,300	435	0
5,300	5,400	442	8
5,400	5,500	450	0
5,500	5,600	457	8
5,600	5,700	465	0
5,700	5,800	472	8
5,800	5,900	480	0
5,900	6,000	487	8
6,000	6,100	495	0
6,100	6,200	502	8
6,200	6,300	510	0
6,300	6,400	517	8
6,400	6,500	525	0
6,500	6,600	532	8
6,600	6,700	540	0
6,700	6,800	547	8
6,800	6,900	555	0
6,900	7,000	562	8
7,000	7,100	570	0
7,100	7,200	577	8
7,200	7,300	585	0
7,300	7,400	592	8
7,400	7,500	600	0
7,500	7,750	615	0
7,750	8,000	630	0
8,000	8,250	645	0
8,250	8,500	660	0
8,500	8,750	675	0

THE SCHEDULE.

Table of rates of 'ad valorem' fees leviable on the Institution of suits.

[*See* section 9 of the Bengal Court-fees (Amendment) Act, 1922]

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fees under Ben. Act IV of 1922 (Bengal).	
Rs.	Rs.	Rs.	A.
8,750	9,000	690	0
9,000	9,250	705	0
9,250	9,500	720	0
9,500	9,750	735	0
9,750	10,000	750	0
10,000	10,500	772	8
10,500	11,000	795	0
11,000	11,500	817	8
11,500	12,000	840	0
12,000	12,500	862	8
12,500	13,000	885	0
13,000	13,500	907	8
13,500	14,000	930	0
14,000	14,500	952	8
14,500	15,000	975	0
15 000	15,500	997	8
15,500	16,000	1,020	0
16,000	16,500	1,042	8
16,500	17,000	1,065	0
17,000	17,500	1,087	8
17,500	18,000	1,110	0
18,000	18,500	1,132	8
18,500	19,000	1,155	0
19,000	19,500	1,177	8
19,500	20,000	1,200	0
20,000	21,000	1,230	0
21,000	22,000	1,260	0
22,000	23,000	1,290	0
23,000	24,000	1,320	0
24,000	25,000	1,350	0
25,000	26,000	1,380	0
26,000	27,000	1,410	0
27,000	28,000	1,440	0
28,000	29,000	1,470	0
29,000	30,000	1,500	0
30,000	31,000	1,530	0
31,000	32,000	1,560	0
32,000	33,000	1,590	0
33,000	34,000	1,620	0
34,000	35,000	1,650	0
35,000	36,000	1,680	0
36,000	37,000	1,710	0
37,000	38,000	1,740	0
38,000	39,000	1,770	0
39,000	40 000	1,800	0
40,000	41,000	1,830	0

THE SCHEDULE

Table of rates of 'ad valorem' fees leviable on the Institution of suits.

[*See* section 9 of the Bengal Court-fees (Amendment) Act, 1922]

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fees under Ben. Act IV of 1922 (Bengal).	
Rs.	Rs.	Rs.	A
41,000	42,000	1,860	0
42,000	43,000	1,890	0
43,000	44,000	1,920	0
44,000	45,000	1,950	0
45,000	46,000	1,980	0
46,000	47,000	2,010	0
47,000	48,000	2,010	0
48,000	49,000	2,070	0
49,000	50,000	2,100	0
50,000	55,000	2,137	8
55,000	60,000	2,175	0
60,000	65,000	2,212	8
65,000	70,000	2,250	0
70,000	75,000	2,287	8
75,000	80,000	2,325	0
80,000	85,000	2,362	8
85,000	90,000	2,400	0
90,000	95,000	2,437	8
95,000	1,00,000	2,475	0
1,00,000	1,05,000	2,512	8
1,05,000	1,10,000	2,550	0
1,10,000	1,15,000	2,587	8
1,15,000	1,20,000	2,625	0
1,20,000	1,25,000	2,662	8
1,25,000	1,30,000	2,700	0
1,30,000	1,35,000	2,737	8
1,35,000	1,40,000	2,775	0
1,40,000	1,45,000	2,812	8
1,45,000	1,50,000	2,850	0
1,50,000	1,55,000	2,887	8
1,55,000	1,60,000	2,925	0
1,60,000	1,65,000	2,962	8
1,65,000	1,70,000	3,000	0
1,70,000	1,75,000	3,037	8
1,75,000	1,80,000	3,075	0
1,80,000	1,85,000	3,112	8
1,85,000	1,90,000	3,150	0
1,90,000	1,95,000	3,187	8
1,95,000	2,00,000	3,225	0
2,00,000	2,05,000	3,262	8

THE SCHEDULE.

Table of rates of 'ad valorem' fees leviable on the Institution of suits.

[*See* section 9 of the Bengal Court-fees (Amendment) Act, 1922.]

and the fee increases at the rate of thirty-seven rupees eight annas for every five thousand rupees, or part thereof, up to a maximum of ten thousand rupees, for example—

Rs	Rs	A.
3,00,000	4,012	8
4,00,000	4,762	8
5,00,000	5,512	8
6,00,000	6,262	8
7,00,000	7,012	8
8,00,000	7,762	8
9,00,000	8,512	8
10,00,000	9,262	8
11,00,000	10,000	0

C

BENGAL ACT VII OF 1935.

THE COURT-FEES (BENGAL AMENDMENT) ACT, 1935.

[Published in the *Calcutta Gazette* of the 16th May, 1935.]

An Act further to amend the Court Fees Act, 1870

Whereas it is expedient to revise the law relating to court-fees in Bengal by amendment of the Court Fees Act, 1870, in its application to Bengal, in the manner hereinafter appearing;

And whereas the previous sanction of the Governor-General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act;

It is hereby enacted as follows:—

Short title, extent and commencement.

1 (*1*) This Act may be called the Court-fees (Bengal Amendment) Act, 1935.

(*2*) It extends to the whole of Bengal

(*3*) It shall come into force in whole or in part on such date as the Local Government may by notification in the *Calcutta Gazette* appoint and for this purpose different dates may be appointed for different provisions of this Act.

Application of Act

2 The Court-fees Act, 1870, hereinafter referred to as the said Act, shall, in its application to Bengal, be amended in the manner hereinafter provided.

Substitution of new section for section 2 of Act VII of 1870

3 For section 2 of the said Act, the following section shall be substituted, namely:—

Definitions.

"2. In this Act, unless there is anything repugnant in the subject or context,—

(*1*) 'appeal' includes a cross-objection;

(*2*) 'Chief Controlling Revenue-authority' means the Board of Revenue;

(*3*) 'Collector' includes any officer not below the rank of sub-deputy collector appointed by the Collector to perform the functions of a Collector under this Act;

(4) 'suit' includes an appeal from a decree except in section 8A."

Amendment of heading of Chapter II

4 In Chapter II of the said Act, for the heading "Fees in the High Courts and in the Courts of Small Causes at the Presidency towns" the heading "Fees payable in Courts and in Public Offices" shall be substituted.

Amendment of heading of Chapter III.

5. In Chapter III of the said Act, for the heading "Fees in other Courts and in Public Offices" the heading "Computation of fees" shall be substituted.

Amendment of section 6

6 (1) Section 6 of the said Act shall be transferred from Chapter III and inserted after section 5 in Chapter II and section 6 as thus transferred shall be re-numbered as sub-section (1) of section 6 and in that section as so re-numbered for the words "be paid" the words "has been paid" shall be substituted.

(2) To the said section as so re-numbered and amended the following sub-section shall be added, namely:—

"(2) Notwithstanding anything contained in sub-section (1) or in any other Act, a Court may receive a plaint or memorandum of appeal in respect of which an insufficient fee has been paid, subject to the following conditions, namely:—

(a) no such plaint or memorandum of appeal shall be registered unless the plaintiff or appellant has, before such date as the Court may have fixed in this behalf paid to the Court such reasonable sum on account of court-fee as the Court may direct;

(b) the Court shall reject the plaint or memorandum of appeal if the sum referred to in clause (a) is not paid before the date fixed by the Court."

Amendment of section 7.

7. In section 7 of the said Act,—

(1) clause (b) of paragraph iv shall be omitted;

(2) in paragraph iv after the words "memorandum of appeal" the following words, figure and letter shall be inserted, namely:—

"subject to the provisions of section 8C,"

(3) for paragraph v the following paragraph shall be substituted, namely:—

"v. In suits for the possession of land, buildings or gardens—

(a) according to the value of the subject-matter, and such value shall be deemed to be fifteen times

the nett profits which have arisen from the land, building or garden during the year next before the date of presenting the plaint, or if the Court sees reason to think that such profits have been wrongly estimated, fifteen times such amount as the Court may assess as such profits or according to the market-value of the land, building or garden,

whichever is lower,

(*b*) if, in the opinion of the Court, such profits are not readily ascertainable or assessable, or where there are no such profits, according to the market-value of the land, building or garden.

Explanation—In this paragraph "building" includes a house, out-house, stable, privy, urinal, shed, hut, wall and any other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever,"

(*4*) for paragraph vi the following paragraph shall be substituted, namely:—

"vi In suits to enforce a right of pre-emption—according to the market-value of the land, building or garden in respect of which the right is claimed.

Explanation—In this paragraph 'building' has the same meaning as in paragraph v";

(*5*) after paragraph vi the following paragraph shall be inserted, namely:—

"viA In suits for partition and separate possession of a share of joint family property or of joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property—

if the plaintiff has been excluded from possession of the property of which he claims to be a co-parcener or co-owner, according to the market-value of the share in respect of which the suit is instituted"

Insertion of new sections 8A to 8F

8 After section 8 of the said Act, the following sections shall be inserted, namely:—

Statement of particulars of subject-matter of suits and plaintiff's valuation thereof.

"8A. In every suit in which an *ad valorem* court-fee is payable under this Act on the plaint, the plaintiff shall file with the plaint a statement of particulars of the subject-matter of the suit and his own valuatic thereof such particulars and the va'

tion are contained in the plaint The statement shall be in such form and shall contain such particulars as may be prescribed by the Local Government by notification in the *Calcutta Gazette* In every such suit the plaintiff shall also, if the Court so directs, file a duplicate copy of the plaint and of the said statement

Procedure where insufficient court-fee is filed on plaint or memorandum of appeal

8B. (*1*) In every suit in which a court-fee is payable under this Act on the plaint or memorandum of appeal the Court shall as soon as may be after the registration of the plaint or memorandum of appeal, and in every case before proceeding to deliver judgment, record a finding whether a sufficient court-fee has been paid

(*2*) If the Court records a finding that an insufficient court-fee has been paid on the plaint or memorandum of appeal the Court shall—

(*a*) stay all further proceedings in the suit until it has determined the proper amount of such court-fee payable and the plaintiff or the appellant, as the case may be, has paid such amount or until the date referred to in clause (*b*), as the case may be:

Provided that if the plaintiff or appellant gives, within such time as the Court may allow, security, to the satisfaction of the Court, for the payment of any additional amount for which he may be found liable the Court may proceed with the suit.

(*b*) fix a date before which the plaintiff or appellant shall pay the amount of court-fee due from him, as determined by the Court under clause (*a*).

(*3*) If the plaintiff or appellant fails to give the security referred to in clausee (*a*) of sub-section (*2*) or to pay the amount referred to in clause (*b*) of that sub-section within the time allowed, or before the date fixed, by the Court, as the case may be, the suit shall be dismissed.

Inquiry as to valuation of suits.

8C. If the Court is of [illegible] matter of any [illegible] revis[illegible] correct valuation and may hold such inquiry as it thinks fit for such purpose.

Investigation to ascertain proper valuation.

8D. (*1*) For the purpose of an inquiry under section 8C the Court may depute, or issue a commission to, any suitable person to make such local or other investigation as may be necessary and to report thereon to the Court. Such report and any evidence recorded by such person shall be evidence in the inquiry.

(2) The Court may, from time to time, direct such party to the suits as it thinks fit to deposit such sum as the Court thinks reasonable as the costs of the inquiry, and if the costs are not deposited within such time as the Court shall fix, may, notwithstanding anything contained in any other Act, dismiss the suit if such party is the plaintiff or the appellant and, in any other case, may recover the costs as a public demand.

Power of persons making inquiry under sections 8C and 8D

8E (1) The Court, when making an inquiry under section 8C and any person making an investigation under section 8D shall have, respectively, for the purposes of such inquiry or investigation, the powers vested in a Court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

(a) enforcing the attendance of any person and examining him on oath or affirmation;

(b) compelling the production of documents or material objects, and

(c) issuing commissions for the examination of witnesses.

(2) An inquiry or investigation referred to in sub-section (1) shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code.

Costs of inquiry as to valuation and refund of excess fee

8F If in the result of an inquiry under section 8C the Court finds that the subject-matter of the suit has been undervalued the Court may order the party responsible for the undervaluation to pay all or any part of the costs of the inquiry

If in the result of such inquiry the Court finds that the subject-matter of the suit has not been undervalued the Court may, in its discretion, order that all or any part of such costs shall be paid by Government or by any party to the suit at whose instance the inquiry has been undertaken, and if any amount exceeding the proper amount of fee has been paid shall refund the excess amount so paid.

Repeal of sections 9 and 10

9 Sections 9 and 10 of the Act are hereby repealed

Substitution of new section for section 11.

10 For section 11 of the said Act, the following section shall be substituted, namely:—

Procedure in suits for *mesne profits* or accounts when amount found due exceeds amount claimed

"11. Where, in any suit for mesne profits or for land and mesne profits or for an account, the fee which would have been payable if the suit had comprised the whole of the relief to which the Court finds it-

plaintiff to be entitled exceeds the fee actually paid, the Court shall require the plaintiff to pay an additional fee equal to the amount of the excess, and if such additional fee is not paid within such time as the Court may fix, the suit, or if a decree has previously been passed therein, so much of the claim as has not been so decreed, shall be dismissed:

Provided that, where the additional fee is payable in respect of a portion of the claim which can be relinquished, that portion only shall be dismissed."

Amendment of section 12.

11 In paragraph ii of section 12 of the said Act, for the words and figures "and the provisions of section 10, paragraph ii, shall apply" the following shall be substituted, namely:—

"and thereafter:—

(*a*) if the party required to pay is the appellant or petitioner, the provisions of sub-sections (*2*) and (*3*) of section 8B shall, so far as may be, apply;

(*b*) if the party required to pay is the respondent or the opposite party, the provisions of sub-section (*2*) of section 8B shall, so far as may be, apply, and, if such party fails to pay the fee required before the date fixed by the Court, the Court shall recover the amount of such fee from him as a public demand

Explanation.—For the purposes of this section a question relating to the classification of any suit for the purpose of section 7 shall not be deemed to be a question relating to valuation."

Substitution of new section for section 17

12. For section 17 of the said Act, the following section shall be substituted, namely:

Multifarious suits.

"17. (1) In any suit in which two or more separate and distinct causes of action are joined and separate and distinct reliefs are sought in respect of each, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees with which the plaints or memoranda of appeal would be chargeable under this Act in separate suits instituted in respect of each such cause of action:

Provided that nothing in this sub-section shall be deemed to affect any power conferred by or under the Code of Civil Procedure, 1908, to order separate trials

(2) Where more reliefs than one based on the same cause of action are sought either jointly or in the alternative, the

fee shall be paid according to the value of the relief in respect of which the largest fee is payable."

Amendment of section 19

13. In section 19 of the said Act,—

(a) in paragraph i after the words "Power-of-attorney" the words "or other written authority" shall be inserted; and

(b) after paragraph xxiv the following paragraph shall be added, namely:—

"xxv Petitions of appeal by Government servants or servants of a Court of Wards against orders of dismissal, reduction or suspension; copies of such orders filed with such appeals, and applications for obtaining such copies"

Insertion of new section 34A.

14. After section 34 of the said Act, the following section shall be inserted, namely:—

Enlargement of time

"34A Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Act, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired"

Substitution of new section for section 35.

15. For section 35 of the said Act, the following section shall be substituted, namely:—

Power to suspend, reduce or remit fees

"35 (1) The Local Government may from time to time subject to such conditions or restrictions as it may think fit to impose, by notification in the *Calcutta Gazette*, suspend the payment of or reduce or remit, in the whole of Bengal or in any part thereof, all or any of the fees mentioned in the first and second Schedules to this Act annexed and may in like manner cancel or vary such order.

(2) The Local Government may from time to time by rules prescribe the manner in which any fee the payment of which is suspended under sub-section (1) may be realised and for this purpose direct that such fee may be recovered as a public demand"

Amendment of Schedule II.

16. In Schedule II to the said Act—

(1) in Article 17 after entry v, the following entry shall be inserted, namely:—

"(va) for partition and separate possession of a share of joint family property or of joint property, or to enforce a right to a	Fifteen rupees."

share in any property on the ground that it is joint family property or joint property if the plaintiff is in possession of the property of which he claims to be a co-parcener or co-owner.

(2) after Article 18 the following Article shall be inserted, namely:—

"18A Application under paragraph 20 of the Second Schedule to the Civil Procedure Code, 1908, to file an arbitration award, and memorandum of appeal from a decree passed under paragraph 21 of the said Schedule.	Fifteen rupees"

(3) After Article 21 the following Article shall be inserted, namely:—

"22 Petition— (*a*) questioning the election of any person as a Municipal Commissioner, when presented to a District Judge under section 36 of the Bengal Municipal Act, 1932, (*b*) questioning the election of any person as a member of a District Board or Local Board, when presented to any authority appointed under clause (*a*) of section 138 of the Bengal Local Self-Government Act of 1885 to decide disputes relating to such elections	Fifteen rupees."

D

BIHAR AND ORISSA COURT-FEES AMENDMENT ACT, 1922.

(BIHAR AND ORISSA ACT I OF 1922.)

Whereas it is expedient to amend the Court Fees Act, 1870, in its application to the Province of Bihar and Orissa in the manner hereinafter appearing;

It is hereby enacted as follows —

Short title, extent and commencement.

1. (1) This Act may be called the Bihar and Orissa Court Fees (Amendment) Act, 1922

(2) It extends to the whole of Bihar and Orissa including the Santal Paganas.

(3) It shall come into force on the twenty-fourth day of August, 1922.

Amendment of section 4

2. In paragraph 3 of section 4 of the Court Fees Act, 1870, as amended by subsequent legislation and hereinafter called the principal Act, for the word "Two" shall be substituted the word "one".

Amendment of section 7

3. In clause (*a*) of section 7 (*v*) of the principal Act, for the word "ten" shall be substituted the word "twenty" and in clause (*b*) of the said section for the word "five", shall be substituted the word "ten"

Amendment of section 17.

4. In section 17 of the principal Act, after the words "of appeal" in both places where they occur the words "or of cross objection" shall be inserted.

Amendment of section 18.

5. In section 18 of the principal Act, for the words "a fee of eight annas" the words "a fee of twelve annas" shall be substituted.

Amendment of section 19.

6. In item viii. of section 19 of the principal Act, for the words "one thousand rupees" the words "two thousand rupees' shall be substituted.

Amendment of Article 1 of Schedule I.

7. (1) In Article 1 of Schedule I of the princip[illegible] for the entry in the first col[illegible] following entry shall subst[illegible] namely:—

"(1) Plaint, written statement pleading a set-off c counterclaim or memorandum of appeal or c cross-objection, not otherwise provided for in th Act, presented to any Civil or Revenue Cour except those mentioned in section 3.

(2) For the "proper fees" set out in the third colum of the said Schedule I and shown opposite Artic 1 in Schedule A of this Act, the "proper fees" shown against them in the second column of th said Schedule A shall be substituted

(3) The proviso in Article 1 of the said Schedule I shal be omitted

Amendment of Articles 6, 7, 8 and 9 of Schedule I

8. For the "proper fees" set out in Schedule I of the principal Act for Articles 6, 7, 8 and 9 and shown in Schedule A of this Act the "proper fees" shown against them in the second column of the said Schedule A shall be substituted.

Amendment of Article 11 of Schedule I

9. For the entries above the proviso in the second column and for the entries in the third column, in Article 11 of Schedule I of the principal Act, the following shall be substituted, namely:—

"When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees, on such amount or value up to ten thousand rupees, and	Two per centum.
when such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees, and	Three per centum.
when such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees, and	Four per centum.
when such amount or value exceeds a lakh of rupees, on the portion of such amount or value which is in excess of one lakh of rupees.	Five per centum.

Amendment of Article 12 of Schedule I

10. For the entry in the second column of Article 12 of Schedule I of the principal Act, and for the first paragraph in the third column of the said Article, the following shall be substituted, namely —

"When the amount or value of any debt or security specified in the certificate under section 8 of the Act exceeds one thousard rupees, on such amount or value up to ten thousand rupees, and	Two per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, three per centum.
when such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees, and	Three per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, four and-a-half per centum.
when such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees, and	Four per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, six per centum
when such amount or value exceeds a lakh of rupees, on the portion of such amount or value which is in excess of one lakh of rupees.	Five per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, seven and-a-half per centum."

Amendment of table of rates in Schedule I

11. For the table of rates of *ad valorem* fees annexed to Schedule I of the principal Act, the table set forth in Schedule B of this Act shall be substituted.

Amendment of Schedule II.

12. (1) In the first column of the said Schedule II after the words "memorandum of appeal" in Articles 5, 11, 17, 20 and 21 the words *"or of cross objection" shall be inserted.*

(2) For the "proper fees" set out in the said Schedule II, and shown in Schedule C of this Act, the "proper fees" shown against them in the second column of the said Schedule C shall be substituted

Exemption of certain probates, letters of administration and certificates.

13. Nothing in this Act shall apply to any probate, letters of administration or certificate under the Succession Certificate Act, 1889, in respect of which the fee payable under the law for the time being in force has been paid prior to the . . . . .

of this Act, but which have not issued.

SCHEDULE A.

[*See* sections 7 (3) and 8 of the Bihar and Orissa Court Fees (Amendment) Act, 1922]

	Proper fees set out in Sch. I of the principal Act.	Proper fees to be substituaed.
Article 1	Twelve annas	One rupee.
	Five rupees	Seven rupees and eight annas
	Ten rupees	Fifteen rupees
	Fifteen rupees	Twenty-two rupees and eight annas
	Twenty rupees	Thirty rupees
	Twenty rupees	Thirty rupees.
	Twenty-five rupees	Thirty-seven rupees and eight annas.
Article 6	Four annas	Six annas.
	Eight annas	Twelve annas.
	One rupee	One rupee and eight annas.
Article 7	Eight annas	Twelve annas
	One rupee	One rupee and eight annas.
	Four rupees	Six rupees.
Article 8	The amount of the duty chargeable on the original	One and-a-half times the amount of the duty chargeable on the original.
	Eight annas	Twelve annas
Article 9	Eight annas	Twelve annas.

SCHEDULE B.

Table of rates of 'ad valorem' fees leviable on the institution of suits

[*See* sections 7 and 11 of the Bihar and Orissa Court Fees (Amendment) Act, 1922.]

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fees under B & O Act I of 1922.
Rs	Rs	Rs. A.
	5	0 6
5	10	0 12
10	15	1 2
15	20	1 8
20	25	1 14
25	30	2 4
30	35	2 10
35	40	3 0
40	45	3 6
45	50	3 12
50	55	4 2
55	60	4 8
60	65	4 14
65	70	5 4
70	75	5 10
75	80	6 0
80	85	6 6
85	90	6 12
90	95	7 2
95	100	7 8
100	110	8 8
110	120	9 8
120	130	10 8
130	140	11 8
140	150	12 8
150	160	13 8
160	170	14 8
170	180	15 8
180	190	16 8
190	200	17 8
200	210	18 8
210	220	19 8
220	230	20 8
230	240	21 8
240	250	22 8
250	260	23 8
260	270	24 8
270	280	25 8
280	290	26 8
290	300	27 8
300	310	28 8
310	320	29 8
320	330	30 8
330	340	31 8

SCHEDULE B.

Table of rates of 'ad valorem' fees leviable on the institution of suits

[*See* sections 7 and 11 of the Bihar and Orissa Court Fees (Amendment) Act, 1922]

When the amount or value of the subject-matter exceeds.	But does not exceed	Proper fees under B. & O. Act I of *1922*	
Rs	Rs	Rs	A
340	350	32	8
350	360	33	8
360	370	34	8
370	380	35	8
380	390	36	8
390	400	37	8
400	410	38	8
410	420	39	8
420	430	40	8
430	440	41	8
440	450	42	8
450	460	43	8
460	470	44	8
470	480	45	8
480	490	46	8
490	500	47	8
500	510	48	8
510	520	49	8
520	530	50	8
530	510	51	8
540	550	52	8
550	560	53	8
560	570	54	8
570	580	55	8
580	590	56	8
590	600	57	8
600	610	58	8
610	620	59	8
620	630	60	8
630	640	61	8
640	650	62	8
650	660	63	8
660	670	64	8
670	680	65	8
680	690	66	8
690	700	67	8
700	710	68	8
710	720	69	8
720	730	70	8
730	740	71	8
710	750	72	8
750	760	73	8
760	770	74	8
770	780	75	8

SCHEDULE B

Table of rates of 'ad valorem' fees leviable on the institution of suits

[*See* sections 7 and 11 of the Bihar and Orissa Court Fees (Amendment) Act, 1922.]

When the amount or value of the subject-matter exceeds	But does not exceed	Proper fees under B. & O. Act I of 1922.	
Rs	Rs	Rs.	A
780	790	76	8
790	800	77	8
800	810	78	8
810	820	79	8
820	830	80	8
830	840	81	8
840	850	82	8
850	860	83	8
860	870	84	8
870	880	85	8
880	890	86	8
890	900	87	8
900	910	88	8
910	920	89	8
920	930	90	8
930	940	91	8
940	950	92	8
950	960	93	8
960	970	94	8
970	980	95	8
980	990	96	8
990	1,000	97	8
1,000	1,100	105	0
1,100	1,200	112	8
1,200	1,300	120	0
1,300	1,400	127	8
1,400	1,500	135	0
1,500	1,600	142	8
1,600	1,700	150	0
1,700	1,800	157	8
1,800	1,900	165	0
1,900	2,000	172	8
2,000	2,100	180	0
2,100	2,200	187	8
2,200	2,300	195	0
2,300	2,400	202	8
2,400	2,500	210	0
2,500	2,600	217	8
2,600	2,700	225	0
2,700	2,800	232	8
2,800	2,900	240	0
2,900	3,000	247	8
3,000	3,100	255	0
3,100	3,200	262	8

SCHEDULE B.

Table of rates of 'ad valorem' fees leviable on the institution of suits.

[*See* Sections 7 and 11 of the Bihar and Orissa Court Fees (Amendment) Act, 1922]

When the amount or value of the subject-matter exceeds	But does not exceed.	Proper fees under B. & O Act I of 1922	
Rs	Rs	Rs.	A.
3,200	3,300	270	0
3,300	3 400	277	8
3,400	3,500	285	0
3,500	3,600	292	8
3,600	3,700	300	0
3,700	3,800	307	8
3,800	3,900	315	0
3,900	4 000	322	8
4,000	4,100	330	0
4,100	4,200	337	8
4,200	4,300	345	0
4,300	4,400	352	8
4,400	4,500	360	0
4,500	4,600	367	8
4,600	4,700	375	0
4,700	4,800	382	8
4,800	4,900	390	0
4,900	5,000	397	8
5,000	5,250	412	8
5,250	5,500	427	8
5,500	5,750	442	8
5,750	6,000	457	8
6,000	6,250	472	8
6,250	6 500	487	8
6,500	6,750	502	8
6,750	7,000	517	8
7,000	7,250	532	8
7,250	7,500	547	8
7,500	7,750	562	8
7,750	8,000	577	8
8,000	8,250	592	8
8,250	8,500	607	8
8,500	8,750	622	8
8,750	9,000	637	8
9,000	9,250	652	8
9,250	9 500	667	8
9,500	9,750	682	8
9,750	10,000	697	8
10,000	10,500	720	0
10,500	11,000	742	8
11,000	11,500	765	0
11,500	12,000	787	8
12 000	12,500	810	0
12,500	13,000	832	8

SCHEDULE B

Table of rates of 'ad valorem' fees leviable on the institution of suits

[*See* Sections 7 and 11 of the Bihar and Orissa Court Fees (Amendment) Act, 1922]

When the amount or value of the subject-matter exceeds.	But does not exceed	Proper fees under B. & O. Act I of 1922.	
13,000	13,500	855	0
13,500	14,000	877	8
14,000	14,500	900	0
14,500	15,000	922	8
15,000	15,500	945	0
15,500	16,000	967	8
16,000	16,500	990	0
16,500	17,000	1,012	8
17,000	17,500	1,035	0
17,500	18,000	1,057	8
18,000	18,500	1,080	0
18,500	19,000	1,102	8
19,000	19,500	1,125	0
19,500	20,000	1,147	8
20,000	21,000	1,177	8
21,000	22,000	1,207	8
22,000	23,000	1,237	8
23,000	24,000	1,267	8
24,000	25,000	1,297	8
25,000	26,000	1,327	8
26,000	27,000	1,357	8
27 000	28,000	1,387	8
28,000	29,000	1,417	8
29,000	30,000	1,447	8
30 000	32,000	1,477	8
32,000	34,000	1,507	8
34,000	36,000	1,537	8
36 000	38,000	1,567	8
38,000	40 000	1,597	8
40,000	42,000	1,627	8
42,000	44,000	1,657	8
44,000	46,000	1,687	8
46,000	48,000	1,717	8
48,000	50,000	1,747	8
50,000	55,000	1,785	0
55,000	60,000	1,822	8
60,000	65,000	1,860	0
65,000	70,000	1,897	8
70,000	75,000	1,935	0
75 000	80,000	1,972	8
80,000	85,000	2,010	0
85,000	90,000	2,047	8
90,000	95,000	2,085	0
95,000	1,00,000	2,122	8
1,00,000	1,05,000	2,160	0

SCHEDULE B.

Table of rates of 'ad valorem' fees leviable on the institution of suits

[*See* Sections 7 and 11 of the Bihar and Orissa Court Fees (Amendment) Act, 1922.]

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fees under B. & O. Act I of 1922	
Rs	Rs	Rs	A
1,05,000	1,10,000	2,197	8
1,10 000	1,15,000	2,235	0
1,15,000	1,20,000	2,272	8
1,20,000	1,25,000	2,310	0
1,25,000	1,30,000	2 347	8
1,30,000	1,35,000	2,385	0
1,35,000	1,40,000	2,422	8
1,40,000	1,45,000	2,460	0
1,45,000	1,50,000	2,497	8
1,50,000	1,55,000	2,535	0
1,55,000	1,60,000	2,572	8
1,60,000	1,65,000	2,610	0
1,65,000	1,70,000	2,647	8
1,70,000	1,75,000	2,685	0
1,75,000	1,80,000	2,722	8
1,80,000	1,85,000	2,760	0
1,85,000	1,90 000	2,797	8
1,90,000	1,95,000	2,835	0
1,95,000	2,00,000	2,872	8
2,00,000	2,05,000	2,910	0

and the fee increases at the rate of thirty-seven rupees eight annas for every five thousand rupees or part thereof, for example, when the amount or value of the subject-matter exceeds.

Rs.	Rs.
3,00,000	3,660
4,00,000	4,410
5,00,000	5,160
6,00,000	5,910
7,00,000	6,660
8,00,000	7,410
9,00,000	8,160
10,00,000	8,910
11,00,000	9,660

SCHEDULE C.

[*See* section 12 (4) of the Bihar and Orissa Court Fees (Amendment) Act, 1922.]

Proper fees set out in Schedule II of the principal Act		Proper fees to be substituted.
Article 1	One anna . .	Two annas.
	Eight annas .	Twelve annas
	One rupee	One rupees and eight annas.
	Two rupees	Three rupees.
Article 1A . .	Twelve annas in addition to any fee levied on the application under clause (*a*), clause (*b*) or clause (*d*) of Article 1 of this Schedule.	One rupee in addition to any fee levied on the application under clause (*a*), clause (*b*) or clause (*d*) of Article 1 of this Schedule.
Article 10	Eight annas . .	*One rupee.*
	One rupee . .	Two rupees.
	Two rupees . .	Three rupees
Article 11	Eight annas .	One rupee
	Two rupees .	Four rupees.
Article 12	Five rupees . .	Ten rupees.
Article 14 . .	Five rupees . .	Ten rupees.
Articles 17, 18 and 19	Ten rupees . .	Fifteen rupees.
Articles 20 and 21	Twenty rupees . .	Thirty rupees

E

BOMBAY ACT NO. II 1932

PART III—COURT FEES ACT.

(As extended by Bom. Act I of 1935.)

(To remain in force up to 31st March 1936 unless extended for a further period.)

It extends to the whole of the Presidency of Bombay.

Amendment of sec. 7 of Act VII of 1870

12. In section 7 of the Court Fees Act, 1870, in its application to the Presidency of Bombay, in this Part referred to as the said Act,—

(*a*) to clause (*d*) of paragraph (iv) the words "or other consequential relief" shall be added;

(*b*) after the word "appeal" in paragraph (iv) the words "with a minimum fee of rupees five in the case of suits falling under clause (*c*)" shall be inserted; and

(*c*) in clauses (1), (2) and (3) of the proviso to paragraph (v) for the words "five", "ten" and "ten" the words "seven and a half" "fifteen" and "fifteen" shall, respectively be substituted.

Amendment of Schedule I to VII of 1870.

13. For Articles 1, 8, 11, 12 and 12-A of, and the Table of rates of *ad valorem* fees in Schedule I to the said Act the following shall be substituted namely:—

SCHEDULE I

Ad Valorem Fees

Number.		Proper Fee
1. Plaint, written statement pleading a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to any Civil or Revenue Court except those mentioned in section 3	When the amount or value of the subject-matter in dispute does *not exceed five rupees,*	Six annas.
	when such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees,	Six annas.
	when such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees,	Twelve annas
	when such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand, up to five thousand rupees,	Five rupees
	when such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten *thousand rupees,*	Fifteen rupees
	when such amount or value exceeds ten thousand rupees, for every five hundred rupees or part thereof, in excess of ten thousand rupees, up to twenty thousand *rupees,*	Twenty-two rupees and eight annas

Ad Valorem Fees—Contd.

Number.		Proper Fee.
	when such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees,	Thirty rupees.
	when such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees,	Thirty rupees.
	when such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees,	Thirty rupees.
	Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be ten thousand rupees.	
8. Copy of any document liable to stamp-duty under the Indian Stamp Act, 1899, when left by any party to a suit or proceeding in place of the original withdrawn.	(*a*) When the stamp duty chargeable on the original does not exceed one rupee.	The amount of the dut chargeable on the or ginal.
	(*b*) In any other case	One rupee.
11 Probate of a will or letters of administration with or without will annexed.	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, on the part of the amount or value in excess of one thousand rupees, up to ten thousand rupees.	Two per centum

Ad Valorem Fees—Contd

Number.		Proper Fee.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds ten thousand rupees, on the part of the amount or value in excess of ten thousand rupees, up to fifty thousand rupees	Three per centum
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds fifty thousand rupees, on the part of the amount or value in excess of fifty thousand rupees, up to one lakh rupees.	Four per centum
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one lakh of rupees, on the part of the amount or value in excess of one lakh of rupees, up to two lakhs of rupees	Four and a half per centum
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two lakhs of rupees, on the part of the amount or value in excess of two lakhs of rupees, up to two lakhs and fifty thousand rupees.	Five per centum.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two lakhs and fifty thousand rupees, on the part of the	Five and a half per centum

Ad Valorem Fees—Contd.

Number.		Proper fee.
	amount or value in excess of two lakhs and fifty thousand rupees, up to three lakhs of rupees	
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds three lakhs of rupees, on the part of the amount or value in excess of three lakhs of rupees up to four lakhs of rupees	Six per centum.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds four lakhs of rupees, on the part of the amount or value in excess of four lakhs of rupees, up to five lakhs of rupees	Six and a half per centum
	When the amount o value of the property in respect of which the grant of probate or letters is made exceeds five lakhs of rupees, on the part of the amount or value in excess of five lakhs of rupees:	Seven per centum.
	Provided that when, after the grant of a certificate under Part X of the Indian Succession Act, 1925, or under Bombay Regulation VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the	

Ad Valorem Fees—Contd

Number.		Proper Fee
	amount of the fee paid in respect of the former grant.	
12. Certificate under Part X of the Indian Succession Act, 1925		The fee leviable in the case of a probate (Article 11) on the amount or value of any debt or security specified in the certificate under sec. 374 of the Act, and one and a half times this fee on the amount or value of any debt or security to which the certificate is extended under s 376 of the Act NOTE—(1) The amount of a debt is its amount including interest on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained (2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act, and where such a power has been conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained
Certificate under Regulation VIII		The fee leviable in the case of a probate (Article 11) on the amount or value of the property in respect of which the certificate is granted.

TABLE OF RATES.

Table of rates of 'ad valorem' fees leviable on tne institu of suits.

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee. Bom. Act II of 1	
Rs.	Rs	Rs.	A.
..	5	0	6
5	10	0	12
10	15	1	2
15	20	1	8
20	25	1	14
25	30	2	4
30	35	2	10
35	40	3	0
40	45	3	6
45	50	3	12
50	55	4	2
55	60	4	8
60	65	4	14
65	70	5	4
70	75	5	10
75	80	6	0
80	85	6	6
85	90	6	12
90	95	7	2
95	100	7	8
100	110	8	4
110	120	9	0
120	130	9	12
130	140	10	8
140	150	11	4
150	160	12	0
160	170	12	12
170	180	13	8
180	190	14	4
190	200	15	0
200	210	15	12
210	220	16	8
220	230	17	4
230	240	18	0
240	250	18	12
250	260	19	8
260	270	20	4
270	280	21	0
280	290	21	12
290	300	22	8
300	310	23	4
310	320	24	0
320	330	24	12
330	340	25	8
340	350	26	4
350	360	27	0
360	370	27	12

TABLE OF RATES.

Table of rates of 'ad valorem' fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds.	But does not exceed	Proper Fee. Bom. Act II of 1932.	
Rs.	Rs	Rs.	A
370	380	28	8
380	390	29	4
390	400	30	0
400	410	30	12
410	420	31	8
420	430	32	4
430	440	33	0
440	450	33	12
450	460	34	8
460	470	35	4
470	480	36	0
480	490	36	12
490	500	37	8
500	510	38	4
510	520	39	0
520	530	39	12
530	540	40	8
540	550	41	4
550	560	42	0
560	570	42	12
570	580	43	8
580	590	44	4
590	600	45	0
600	610	45	12
610	620	46	8
620	630	47	4
630	640	48	0
640	650	48	12
650	660	49	8
660	670	50	4
670	680	51	0
680	690	51	12
690	700	52	8
700	710	53	4
710	720	54	0
720	730	54	12
730	740	55	8
740	750	56	4
750	760	57	0
760	770	57	12
770	780	58	8
780	790	59	4
790	800	60	0
800	810	60	12
810	820	61	8
820	830	62	4
830	840	63	0

TABLE OF RATES.

Table of rates of 'ad valorem' fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds.	But does not exceed	Proper Fee. Bom. Act II of 1932.
Rs	Rs	Rs. A.
840	850	63 12
850	860	64 8
860	870	65 4
870	880	66 0
880	890	66 12
890	900	67 8
900	910	68 4
910	920	69 0
920	930	69 12
930	940	70 8
940	950	71 4
950	960	72 0
960	970	72 12
970	980	73 8
980	990	74 4
990	1,000	75 0
1,000	1 100	80 0
1,100	1,200	85 0
1,200	1,300	90 0
1,300	1,400	95 0
1,400	1,500	100 0
1,500	1,600	105 0
1,600	1,700	110 0
1,700	1,800	115 0
1,800	1,900	120 0
1,900	2,000	125 0
2 000	2,100	130 0
2,100	2,200	135 0
2,200	2 300	140 0
2,300	2,400	145 0
2,400	2 500	150 0
2,500	2,600	155 0
2,600	2,700	160 0
2,700	2,800	165 0
2,800	2 900	170 0
2,900	3 000	175 0
3,000	3,100	180 0
3,100	3,200	185 0
3,200	3,300	190 0
3,300	3,100	195 0
3 400	3,500	200 0
3,500	3,600	205 0
3 600	3,700	210 0
3,700	3,800	215 0
3,800	3,900	220 0
3 900	4,000	225 0
4,000	4,100	230 0

TABLE OF RATES.

Table of rates of 'ad valorem' fees leviable on the institution of suits

When the amount or value of the subject-matter exceeds.	But does not exceed	Proper Fee. Bom. Act II of 1932	
Rs.	Rs.	Rs.	A
4,100	4 200	235	0
4,200	4,300	240	0
4 300	4,400	245	0
4,400	4,500	250	0
4,500	4,600	255	0
4,600	4,700	260	0
4,700	4,800	265	0
4,800	4,900	270	0
4,900	5,000	275	0
5,000	5 250	290	0
5 250	5,500	305	0
5,500	5,750	320	0
5,750	6,000	335	0
6,000	6,250	350	0
6,250	6,500	365	0
6,500	6,750	380	0
6,750	7,000	395	0
7,000	7,250	410	0
7,250	7,500	425	0
7,500	7,750	440	0
7,750	8,000	455	0
8 000	8 250	470	0
8,250	8,500	485	0
8,500	8,750	500	0
8,750	9,000	515	0
9,000	9,250	530	0
9,250	9 500	545	0
9 500	9,750	560	0
9,750	10,000	575	0
10,000	10,500	597	8
10,500	11,000	620	0
11,000	11 500	642	8
11 500	12 000	665	0
12 000	12,500	687	8
12 500	13,000	710	0
13,000	13 500	732	8
13,500	14 000	755	0
14,000	14,500	777	8
14,500	15 000	800	0
15,000	15,500	822	8
15,500	16,000	815	0
16,000	16,500	867	8
16,500	17,000	890	0
17,000	17 500	912	8
17 500	18 000	935	0
18,000	18,500	957	8
18,500	19,000	980	0

TABLE OF RATES.

Table of rates of 'ad valorem' fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee. Bom. Act II of 1932	
Rs.	Rs	Rs	A
19,000	19,500	1,002	8
19,500	20,000	1,025	0
20,000	21,000	1,055	0
21,000	22,000	1,085	0
22,000	23,000	1,115	0
23,000	24,000	1,145	0
24,000	25,000	1,175	0
25,000	26,000	1,205	0
26,000	27,000	1,235	0
27,000	28,000	1,265	0
28,000	29,000	1,295	0
29 000	30 000	1,325	0
30 000	32,000	1,355	0
32,000	34,000	1,385	0
34 000	36,000	1,415	0
36 000	38,000	1,445	0
38,000	40,000	1,475	0
40,000	42,000	1,505	0
42,000	44,000	1,535	0
44,000	46,000	1,565	0
46,000	48,000	1,595	0
48,000	50,000	1,625	0

and the fee increases at the rate of thirty rupees for every five thousand rupees, or part thereof, up to a maximum of ten thousand rupees, for example—

Rs.	Rs.	A.
1,00,000	1,925	0
2 00,000	2,525	0
3 00,000	3 125	0
4,00,000	3,725	0
5 00,000	4,325	0
6,00,000	4,925	0
7,00,000	5,525	0
8,00,000	6,125	0
9,00,000	6 725	0
10,00,000	7,325	0
11,00,000	7,925	0
12,00 000	8,525	0
13,00,000	9 125	0
14,00,000	9,725	0
15,00,000	10,000	0

Amendment of Schedule II to Act VIII of 1870

14. For Articles 1, 6, 7, 12, 14, 17, 18, 19, 20 and 21 of Schedule II to the said Act the following shall be substituted, namely:—

SCHEDULE II.

Fixed Fees

Number.		Proper fee
1. Application or petition.	(a) When presented to any officer of the Customs or Excise Department or to any *Magistrate by any* person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings or when presented to any officer of land revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or *improvement:* or when presented to any *Civil Court* other than a principal Civil Court of original jurisdiction, or to any Court of Small Causes constituted under the Provincial Small Causes Courts Act, 1887, or to a Collector or other officer of reve-	Two annas

Fixed Fees—Contd.

Number.		Proper fee.
	nue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees, not being an application for assistance under section 86 of the Bombay Land Revenue Code, 1879: or when presented to any Civil, Criminal or Revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or officer, or of any other document on record in such Court or office.	
	(*aa*) When presented to a Collector or other officer of revenue for assistance under section 86 of the Bombay Land Revenue Code, 1879	Four annas.
	(*b*) When containing a complaint or charge of any offence other than an offence for which police officers may, under the Criminal Procedure Code, 1898, *arrest without warrant*, and presented to any Criminal Court or when presented to a Civil, Criminal or *Revenue Court, or to a* Collector, or any Revenue officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity and not otherwise provided for by the Act: or to deposit in Court revenue or rent:	Eight annas.

Fixed Fees—Contd.

Number		Proper fee.
	or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant.	
	(c) When presented to a Chief Commissioner or other Chief Controlling Revenue or Executive Authority or to a Commissioner of Revenue or Circuit or to any chief officer charged with the executive administration of a division and not otherwise provided for by this Act.	Two rupees.
	(d) When presented to a High Court.	Four rupees.
6 Bail bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1898, or the Code of Civil Procedure, 1908, and not otherwise provided for by this Act.		One rupee.
7. Undertaking under section 49 of the Indian Divorce Act, 1869		One rupee.
12 Caveat	When the amount or value of the property involved does not exceed two thousand rupees.	Five rupees.
	When the amount or value of the property involved exceeds two thousand rupees.	Ten rupees.



Fixed Fees—Contd

Number.		Proper fee.
14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866 (XXI of 1866).		Ten rupees
17 Plaint or memorandum of appeal in each of the following suits:—		
(i) to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court, (ii) to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates, and	When the amount or value of the property involved does not exceed five hundred rupees,	Ten rupees.
	When the amount or value of the property involved exceeds five hundred rupees.	Fifteen rupees.
(iii) to obtain a declaratory decree or order where no consequential relief is prayed		Fifteen rupees.
(iv) to set aside alienation;		Fifteen rupees.
(v) to set aside a decree or award;	When the amount or value of the property involved does not exceed five hundred rupees.	Ten rupees.
	When the amount or value of the property involved exceeds five hundred rupees.	Fifteen rupees.
(vi) to set aside an adoption, and		Fifteen rupees.
(vii) any other suit where it is not possible to estimate at a money value the subject-matter in dispute, and which is not otherwise provided for by this Act.		Fifteen rupees.
18. Application—		
(a) under paragraph 17 of the Second Schedule to the Code of Civil procedure, 1908;		Ten rupees.

Fixed Fees—Contd.

Number		Proper fee.
(*b*) for probate or letters of administration or for revocation thereof under the Indian Succession Act, 1925,	When the amount or value of the estate does not exceed two thousand rupees.	Two rupees.
	When it exceeds two thousand rupees, but does not exceed five thousand rupees.	Five rupees.
(*c*) for a certificate under Part X of the Indian Succession Act, 1925, or Bombay Regulation, VIII of 1827;	When it exceeds five thousand rupees.	Ten rupees
(*d*) for opinion or advice or for discharge from a Trust, or for appointment of new Trustees, under secs 34, 72, 73 or 74 of the Indian Trusts Act, 1882		Ten rupees.
(*e*) for the winding up of a company, under section 166 of the Indian Companies Act, 1913,		Ten rupees.
(*f*) under Rule 58 of Order XXI of the Code of Civil Procedure, 1908, regarding a claim to attached property	When the amount or value of the property exceeds five hundred rupees	Ten rupees.
19 Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure 1908		Twenty rupees.
20 Every petition under the Indian Divorce Act, 1869, except petitions under sec 44 of that Act and every memorandum of appeal under sec 55 of that Act		Thirty rupees.
21 Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865		Thirty rupees.

CENTRAL PROVINCES ACT No. XVI OF 1935

THE COURT-FEES (CENTRAL PROVINCES AMENDMENT) ACT, 1935

An Act to amend the Court Fees Act, 1870, with reference to the scale of court-fees in the Central Provinces.

Preamble.

Whereas it is expedient to revise the scale of court-fees for the Central Provinces by amendment of the Court Fees Act, 1870, in its application to the Central Provinces, in the manner hereinafter appearing;

And Whereas the previous sanction of the Governor required under section 80-C of the Government of India Act has been obtained to the passing of this Act;

It is hereby enacted as follows:

Short title, commencement and duration

1. (1) This Act may be called the Court Fees (Central Provinces Amendment) Act, 1935

(2) It shall come into force on such date as the Local Government may, by notification, appoint in this behalf and shall remain in force to the 31st day of March 1943.

Application of Act VII of 1870.

2. The Court Fees Act, 1870 (hereinafter referred to as the said Act), shall be amended, in its application to Central Provinces, in the manner hereinafter provided.

Amendment of section 7, Act VII of 1870

3. In section 7 of the said Act—

(*a*) after the word "appeal" in paragraph iv, the words "with a minimum fee of rupees five in the case of suits falling under clause (*c*)" shall be inserted;

(*b*) in clause (*a*) of paragraph v, between the words "or" and "forms part", the words "where the land" shall be inserted;

(*c*) in clause (*b*) of paragraph v—

(*i*) between the words "or" and "forms part", the words "where the land" shall be inserted; and

(*ii*) for the word "five" the words "seven and half" shall be substituted; and

(*d*) for paragraph ix, the following paragraph shall be substituted, namely:—

"ix. (a) In suits against a mortgagee for the recovery of the property mortgaged,—

according to the principal money expressed to be secured by the instrument of mortgage, and

(b) in suits by a mortgagee to foreclose the mortgage, or, where the mortgage is made by conditional sale, to have the sale declared absolute,—

according to the amount claimed as due at the date of presenting the plaint."

Amendment of Article 1, Schedule I, Act VII of 1870

4. In Schedule I to the said Act—

(a) before the word "presented" in the first column of Article 1, the words "in any suit between landlord and tenant for an arrear of rent" shall be inserted;

(b) after Article 1, the following Article shall be inserted, namely —

"1-A Plaint, written statement pleading a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to any Civil or Revenue Court except those mentioned in section 3, in suits *other* than those provided for in Article 1.	When the amount or value of the subject-matter in dispute does ont exceed five rupees.	Six annas
	When such amount or value exceeds five rupees, for every five rupees or part thereof, in excess of five rupees, up to one hundred rupees	Six annas.
	When such amount or value exceeds one hundred rupees, for every ten rupees or part thereof, in excess of one hundred rupees, up to one thousand rupees	Twelve annas
	When such amount or value exceeds one thousand rupees, for every one hundred rupees or part thereof, in excess of one thousand rupees, up to five thousand rupees.	Six rupees.
	When such amount or value exceeds five thousand rupees, for every two hundred rupees or part thereof, in excess of five thousand rupees, up to ten thousand rupees	Ten rupees.

When such amount or value exceeds ten thousand rupees, for every five hundred rupees or part thereof in excess of ten thousand rupees, up to twenty thousand rupees	Twenty rupees
When such amount or value exceeds twenty thousand rupees, for every one thousand rupees or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees.	Thirty rupees
When such amount or value exceeds thirty thousand rupees, for every two thousand rupees or part thereof in excess of thirty thousand rupees, up to fifty thousand rupees	Thirty rupees
When such amount or value exceeds fifty thousand rupees, for every five thousand rupees or part thereof, in excess of fifty thousand rupees.	Thirty rupees.
Provided that the maximum fee leviable shall not exceed five thousand rupees";	

Amendment of Article 6, clauses (*a*) and (*b*), Schedule I, Act VII of 1870

(*c*) in the third column of Article 6 for the words "Four annas" opposite clause (*a*), the words "Six annas", and for the words "Eight annas" opposite clause (*b*), the words "Twelve annas" shall be substituted;

Amendment of Article 7, Schedule I, Act VII of 1870

(*d*) in the third column of Article 7 for the words "Eight annas" opposite clause (*a*), the words "Twelve annas", and for the words "One rupee" opposite clause (*b*), the words "One rupee and eight annas" shall be substituted;

Amendment of Article 11 and 12, Schedule I, Act VII of 1870.

(*e*) for Articles 11 and 12 and the entries in the second and third columns thereof, the following Articles and entries shall be substituted, namely:

"11 *Probate of a* will or letters of administration with or without will annexed.	When *the amount or* value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees but does not exceed *five thousand rupees.*	Two *per centum on such* amount or value
	When such amount or value exceeds five thousand rupees but does not exceed ten thousand rupees.	One hundred rupees plus two and a half per *centum* on the amount or value in excess of five thousand rupees
	When such amount or value exceeds ten thousand rupees.	Two hundred and fifty rupees plus three per *centum* on the amount or value in excess of ten thousand rupees:

Provided that when after the grant of a certificate under Part X of the Indian Succession Act, 1925, or under Bombay Regulation VIII of 1827 in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant

12 Certificate under Part X of the Indian Succession Act, 1925, (XXXIX of 1925)	When the amount or value of any debt or security specified in the certificate under sec 374 of the Act exceeds one thousand rupees but does not exceed five thousand rupees.	Two per *centum* on such amount or value and three per *centum* on the amount or value of any debt or security to which the certificate is extended under sec. 376 of the Act.
	When such amount or value exceeds five thousand rupees but does not exceed ten thousand rupees.	One hundred rupees plus two and a half per *centum* on the amount or value in excess of five thousand rupees, and four and a half per *centum* on the amount or value of any debt or security to which the certificate is extended *under sec. 376 of the* Act.
	When such amount or value exceeds ten thousand rupees.	Two hundred and fifty rupees plus three per *centum* on the [illegible] or value in excess [illegible] ten thousand [illegible] and seven and a [illegible]

		per *centum* on the amount or value of any debt or security to which the certificate is extended under sec. 376 of the Act", -

(*f*) for the Table of rates of *ad valorem* fees leviable on the institution of suits, the following Table shall be substituted, namely:—

Amendment of Table of Table of rates of *ad valorem* fees.

Table of rates of ad valorem fees leviable on the institution of suits

When the amount or value of the subject-matter exceeds.	But does not exceed	Proper fees under C. P. Act XVI of 1935
Rs	Rs	Rs A
..	5	0 6
5	10	0 12
10	15	1 2
15	20	1 8
20	25	1 14
25	30	2 4
30	35	2 10
35	40	3 0
40	45	3 6
45	50	3 12
50	55	4 2
55	60	4 8
60	65	4 14
65	70	5 4
70	75	5 10
75	80	6 0
80	85	6 6
85	90	6 12
90	95	7 2
95	100	7 8
100	110	8 4
110	120	9 0
120	130	9 12
130	140	10 8
140	150	11 4
150	160	12 0
160	170	12 12
170	180	13 8
180	190	14 4
190	200	15 0
200	210	15 12
210	220	16 8
220	230	17 4
230	210	18 0
240	250	18 12

Table of rates of 'ad valorem' fees leviable on the institution of suits

When the amount or value of the subject-matter exceeds	But does not exceed	Proper fees under C. P. Act XVI of 1935.	
Rs.	Rs.	Rs	A.
250	260	19	8
260	270	20	4
270	280	21	0
280	290	21	12
290	300	22	8
300	310	23	4
310	320	24	0
320	330	24	12
330	340	25	8
340	350	26	4
350	360	27	0
360	370	27	12
370	380	28	8
380	390	29	4
390	400	30	0
400	410	30	12
410	420	31	8
420	430	32	4
430	440	33	0
440	450	33	12
450	460	34	8
460	470	35	4
470	480	36	0
480	490	36	12
490	500	37	8
500	510	38	4
510	520	39	0
520	530	39	12
530	540	40	8
540	550	41	4
550	560	42	0
560	570	42	12
570	580	43	8
580	590	44	4
590	600	45	0
600	610	45	12
610	620	46	8
620	630	47	4
630	640	48	0
640	650	48	12
650	660	49	8
660	670	50	4
670	680	51	0
680	690	51	12
690	700	52	8
700	710	53	4
710	720	54	0
720	730	54	12
730	740	55	8

Table of rates of 'ad valorem' fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fees under C. P. Act XVI of 1935	
Rs.	Rs.	Rs.	A
740	750	56	4
750	760	57	0
760	770	57	12
770	780	58	8
780	790	59	4
790	800	60	0
800	810	60	12
810	820	61	8
820	830	62	4
830	840	63	0
840	850	63	12
850	860	64	8
860	870	65	4
870	880	66	0
880	890	66	12
890	900	67	8
900	910	68	4
910	920	69	0
920	930	69	12
930	940	70	8
940	950	71	4
950	960	72	0
960	970	72	12
970	980	73	8
980	990	74	4
990	1,000	75	0
1,000	1,100	81	0
1,100	1,200	87	0
1,200	1,300	93	0
1,300	1,400	99	0
1,400	1,500	105	0
1 500	1,600	111	0
1,600	1,700	117	0
1,700	1,800	123	0
1,800	1,900	129	0
1,900	2,000	135	0
2,000	2 100	141	0
2 100	2 200	147	0
2,200	2,300	153	0
2,300	2,400	159	0
2 400	2,500	165	0
2,500	2 600	171	0
2 600	2,700	177	0
2,700	2 800	183	0
2,800	2,900	189	0
2,900	3,000	195	0
3,000	3,100	201	0
3,100	3 200	207	0
3,200	3,300	213	0

Table of rates of 'ad valorem' fees leviable on the institution of suits

When the amount or value of the subject-matter exceeds.	But does not exceed	Proper fee.	
Rs.	Rs.	Rs.	A.
3,300	3,400	219	0
3,400	3,500	225	0
3,500	3,600	231	0
3,600	3,700	237	0
3,700	3,800	243	0
3,800	3,900	219	0
3,900	4,000	255	0
4,000	4,100	261	0
4,100	4,200	267	0
4,200	4,300	273	0
4 300	4,400	279	0
4,400	4,500	285	0
4,500	4,600	291	0
4,600	4,700	297	0
4,700	4,800	303	0
4,800	4,900	309	0
4,900	5 000	315	0
5,000	5,200	325	0
5,200	5,400	335	0
5,400	5,600	345	0
5,600	5,800	355	0
5,800	6,000	365	0
6,000	6,200	375	0
6,200	6,400	385	0
6,400	6,600	395	0
6,600	6,800	405	0
6,800	7,000	415	0
7,000	7,200	425	0
7,200	7,400	435	0
7 400	7,600	445	0
7,600	7,800	455	0
7,800	8 000	465	0
8,000	8,200	475	0
8,200	8,400	485	0
8,400	8,600	495	0
8,600	8,800	505	0
8 800	9,000	515	0
9,000	9,200	525	0
9,200	9,400	535	0
9,400	9 600	545	0
9,600	9,800	555	0
9,800	10 000	565	0
10,000	10,500	585	0
10,500	11,000	605	0
11 000	11 500	625	0
11,500	12 000	645	0
12 000	12,500	665	0
12 500	13,000	685	0
13,000	13,500	705	

Table of rates of 'ad valorem' fees leviable on the institution of suits

When the amount or value of the subject-matter exceeds.	But does not exceed	Proper fee
Rs	Rs.	Rs. A.
13,500	14,000	725 0
14,000	14,500	745 0
14,500	15,000	765 0
15,000	15,500	785 0
15,500	16,000	805 0
16,000	16,500	825 0
16,500	17,000	845 0
17,000	17,500	865 0
17,500	18,000	885 0
18,000	18,500	905 0
18,500	19,000	925 0
19,000	19,500	945 0
19,500	20,000	965 0
20,000	21,000	995 0
21,000	22,000	1,025 0
22,000	23 000	1,055 0
23,000	24,000	1,085 0
24,000	25,000	1,115 0
25,000	26,000	1,145 0
26 000	27,000	1,175 0
27,000	28,000	1,205 0
28,000	29 000	1,235 0
29,000	30,000	1,265 0
30,000	32,000	1,295 0
32,000	34,000	1,325 0
34,000	36,000	1,355 0
36,000	38,000	1,385 0
38,000	40 000	1,415 0
40 000	42,000	1,445 0
42,000	44,000	1,475 0
44,000	46,000	1,505 0
46,000	48,000	1,535 0
48,000	50 000	1,565 0

When the amount or value of the subject-matter exceeds fifty thousand rupees, for every five thousand rupees or part thereof in excess of fifty thousand rupees.	Thirty rupees.
Provided that the maximum fee leviable shall not exceed five thousand rupees."	

5. In Schedule II to the said Act—

Amendment of Schedule II, Article 1 clause (*a*), Act VII of 1870

(*a*) in the third column of Article 1, for the words "One anna" opposite clause (*a*), the words "Two annas" shall be substituted;

Amendment of Schedule II, Article 1, clause (*b*), Act VII of 1870

(*b*) for clause (*b*) of Article 1 in the second column and the entry opposite it in the third column, the following clause and entries shall be substituted, namely:—

"(*b*) When containing a complaint of charge of any offence other than an offence for which police officers may, under the Code of Criminal Procedure 1898, arrest without warrant, and presented to any Criminal Court,	Twelve annas
or for orders of arrest or attachment before judgment or for temporary injunctions;	Two rupees.
or for compensation for arrest or attachment before judgment or in respect of a temporary injunction obtained on insufficient grounds:	Two rupees
or for the appointment of a receiver in a case in which the applicant has no present right of possession of the properties in dispute;	Five rupees.
or for setting aside decrees passed *ex parte* and for review of orders dismissing suits for default;	Twelve annas
or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any Revenue Officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act;	Twelve annas
or to deposit in Court revenue or rent;	Eight annas

or for determination by a Court of the amount of compensation to be paid by landlord to his tenant."	Eight annas.

Amendment of Schedule II, Article 1, clauses (c) and (d), Act VII of 1870

(c) for clauses (c) and (d) in the second column of Article 1 and for the entries in the third column opposite these clauses, the following clauses and entries shall be substituted, namely:—

"(c) When presented to a Commissioner of Revenue or to any Chief Officer charged with the executive administration of a division, and not otherwise provided for by this Act	One rupee and eight annas
(d) When presented to a Chief Controlling Revenue Authority or Executive Authority and not otherwise provided for by this Act	Two rupees
(e) When presented to the Court of the Judicial Commissioner—	
(i) otherwise than under section 25 of the Provincial Small Causes Courts Act, 1887, or sec 115 of the Code of Civil Procedure, 1908,	Two rupees
(ii) under section 25 of the Provincial Small Causes Courts Act, 1887,	Five rupees.
(iii) under sec. 115 of the Code of Civil Procedure, 1908	Five rupees

Amendment of Schedule II, Article 10, clauses (a) and (c), Act VII of 1870.

(d) in the third column of Article 10, the words "Eight annas" opposite clause (a), the words "Twelve annas", and for the words "Two rupees" opposite clause (c), the words "Two rupees and eight annas" shall be substituted;

Amendment of Schedule II, Article 11, clauses (a) and (b), Act VII of 1870

(e) in the third column of Article 11, for the words "Eight annas' opposite clause (a), the words "One rupees", and for the words "Two rupees" opposite clause (b), the words "Four rupees" shall be substituted:

Amendment of Schedule II, Articles 17, 18 and 19, Act VII of 1870

(*f*) for Articles 17, 18 and 19, the following Articles shall be substituted, namely —

"17 Plaint or memorandum of appeal in each of the following suits — (i) to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court, (ii) to alter or cancel any entry in a register of the names of proprietors or revenue-paying estates, (iii) to obtain a declaratory decree where no consequential relief is prayed,	Fifteen rupees
(iv) to set aside an award, (v) to set aside an adoption, (vi) every other suit where it is not possible to estimate at a money value the subject-matter in dispute, and which is not otherwise provided for by this Act	Fifteen rupees
18 Applications— (*a*) under para. 17 or 20 of the Second Schedule to the Code of Civil Procedure, 1908 (V of 1908),	One rupee
(*b*) for opinion or advice or for discharge from a trust, or for appointment of new trustees under sec 34, 72, 73 or 74 of the Indian Trusts Act, 1882 (II of 1882),	Ten rupees
(*c*) for winding up of a company, under section 166 of the Indian Companies Act, 1913 (VII of 1913)	Ten rupee
(*d*) for the appointment or declaration of a person as guardian of the person or property, or both, of minors, under	Two rupee

the Guardians and Wards Act, 1890 (VIII of 1890)	
19. Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908, Order 36, Rule (1).	Fifteen rupees."

6. Nothing in this Act shall apply to any probate, letters of administration or certificate in respect of which the fee payable under the law for the time being in force has been paid prior to the commencement of this Act but which have not been issued

G

MADRAS ACT No. V OF 1922

PASSED BY THE GOVERNOR OF FORT ST. GEORGE IN COUNCIL.

[*Received the assent of the Governor on the 30th March, 1922 and that of the Governor-General on the 17th April, 1922*]

An Act to amend the Court Fees Act, 1870

Whereas it is expedient to amend the Court Fees Act, 1870, in its application to the Presidency of Madras;

It is hereby enacted as follows —

Short title and application.

1. (*a*) This Act may be called the Madras Court Fees (Amendment) Act, 1922

(*b*) It extends to the whole of the Presidency of Madras

Interpretation clause

2. (1) In this Act 'the principal Act' shall mean 'the Court Fees Act, 1870.'

(2) In this Act and in the principal Act, unless there is nothing repugnant in the subject or context, 'Memorandum of appeal' shall include memorandum of cross objection.

Amendment of section 5 of the Principal Act.

3. In the second paragraph of section 5 of the principal Act, the words 'Registrar' and 'Chief Judge' shall be substituted for 'clerk of the Court' and the first 'Judge' respectively.

Amendment of section 7

4. In section 7 of the principal Act the words "except suits for relief under section 14 of the Religious Endowments Act, 1863, or under section 91 or section 92 of the Code of Civil Procedure, 1908," shall be added between the words 'mentioned' and 'shall'

Amendment of section 7 (ii)

5. In section 7 (ii) of the principal Act, after the words 'shall be deemed to be' the words 'in suits for maintenance, the amount claimed to be payable for one year and other suits' shall be added

Addition of a proviso to section 7 (iv).

6. The following shall be added after the words 'Memorandum of appeal' in section 7, paragraph iv, of the principal Act:—

'Provided that in suits coming under sub-clause (*c*), in cases where the relief sought is with reference to any immoveable property, such valuation shall not be less than half the value of the immoveable property calculated in the manner provided for by paragraph (v) of this section'

Addition to section 7.

7. In section 7 of the principal Act between paragraph iv and v the following paragraph shall be added as iv (a):—

"In a suit for cancellation of a decree for money or other property having a money value, or other document securing money or other property having such value,

according to the value of the subject-matter of the suit, and such value shall be deemed to be—

if the whole decree or other document is sought to be cancelled, the amount or the value of the property for which the decree was passed or the other document executed,

if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property"

Amendment of section 7 (v)

8. In section 7 (v) of the principal Act—

in (*a*) for the word 'ten' the word 'twenty' shall be substituted,

in (*b*) for the word 'five' the word 'ten' shall be substituted;

and after clause (*d*) the following proviso shall be substituted for the existing proviso.

'Provided that if rules are framed under section 3 of the Suits Valuation Act, 1887 for determining the value of land for the purposes of jurisdiction, the value so determined shall be deemed to be the value of the land for the purposes of this paragraph'

Amendment of section 11.

9. For the second paragraph of section 11 of the principal Act, the following paragraphs shall be substituted:—

'Where a decree directs an inquiry as to *mesne profits* which have accrued on the property during a period prior to the institution of the suit, if the profits ascertained on such inquiry exceeds the profits claimed, no final decree shall be passed till the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid If the additional fee is not paid within such time as the Court shall fix, the claim for the

excess shall be dismissed, unless the Court, for sufficient cause, extends the time for payment.'

'Where a decree directs an inquiry as to *mesne profits* from the institution of the suit, and a final decree is passed in accordance with the result of such inquiry, the decree shall not be executed until such fee is paid as would have been payable on the amount claimed in execution if a separate suit had been instituted therefor'

Amendment of section 18.

10. In section 18 of the principal Act, for the words 'eight annas' the words 'one rupee' shall be substituted

Amendment of schedules I and II.

11. For Schedules I and II of the principal Act, the following schedules shall be substituted:—

SCHEDULE I.

Ad Valorem Fees

Number		Proper fee.
1. *Plaint, or written statement pleading a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) presented to any Civil or Revenue Court except those mentioned in section 3	When the amount or value of the subject-matter in dispute does not exceed five rupees	Eight annas.
	When such amount or value exceeds five rupees, for every five rupees or part thereof, in excess of five rupees, up to one hundred rupees.	Nine annas.
	When such amount or value exceeds one hundred rupees for every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees	One rupee two annas
	When such amount or value exceeds one thousand rupees, for every one hundred	Seven ru[illegible] annas.

Ad Valorem Fees—Contd.

Number.		Proper fee.
Plaint, etc.—*Contd.*	rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees.	
	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees.	Fifteen rupees.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees.	Twenty-two rupees, eight annas.
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees	Thirty rupees.
	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees.	Do.
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees.	Do.

Ad Valorem Fees—Contd.

Number.		Proper fee.
2. *Plaint, or written statement pleading a set-off or counter-claim, presented to a court outside the Presidency Town in any suit of the nature cognizable by Court of Small causes, when the amount or value of the subject-matter does not exceed Rs. 500	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Six annas.
	When such amount or value exceeds five rupees, for every five rupees or part thereof, in excess of five rupees, up to one hundred rupees.	Do.
	When such amount or value exceeds one hundred rupees for every ten rupees or part thereof in excess of one hundred rupees up to five hundred rupees	Twelve annas
3. Plaint in a suit for possession under (the Specific Relief Act, 1877, section 9).		An amount of one-half the scale of fee prescribed in Article 1 above.
4 Application for review of judgment, if presented on or after the ninetieth day from the date of the decree		The fee leviable on the plaint or memorandum of appeal.
5 Application for review of judgment, if presented before the ninetieth day from the date of the decree		One-half of the fee leviable on the plaint or memorandum of appeal.
6 Copy or translation of a judgment or order not being or having the force of a decree	When such judgment or order is passed by any Civil Court other than a High Court, or by the presiding officer of any Revenue Court or Office, or by any	

Ad Valorem Fees—Contd.

Number.		Proper fee.
6 Copy or translation of a judgment or order not being or having the force of a decree—*contd.*	other Judicial or Executive Authority—	
	(*a*) If the amount or value of the subject-matter is fifty or less than fifty rupees.	Six annas
	(*b*) If such amount or value exceeds fifty rupees.	Twelve annas
	When such judgment or order is passed by a High Court	One rupee eight annas.
6-A Copy or translation of a judgment or order of a Criminal Court.		Eight annas.
7. Copy of a decree or order having the force of a decree.	When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—	
	(*a*) If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees.	Eight annas
	(*b*) If such amount or value exceeds fifty rupees	One rupee.
	When such decree or order is made by a High Court.	Four rupees
8 Copy of any document liable to stamp duty under the Indian Stamp Act, 1899, when left by any party to a suit or proceeding in place of the original withdrawn	(*a*) When the stamp-duty chargeable on the original does not exceed eight annas.	The amount of the duty chargeable on the original.
	(*b*) In any other case	Eight annas.

Ad Valorem Fees—Contd.

Number.		Proper fee.
9 Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or office, or from the office of any chief officer charged with the executive administration of a division	For every three hundred and sixty words or fraction of three hundred and sixty words.	Eight annas.
10. [*Repealed by the Guardians and Wards Act, 1890 (VIII of 1890)*]		
11. Probate of a will or letters of administration with or without will annexed.	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, but does not exceed five thousand rupees	Two per centum on such amount or value.
	When the amount or value exceeds five thousand rupees	Three per centum on such amount or value.
	Provided that when, after the grant of a certificate under the Succession Certificate Act, 1889, or under the Regulation of the Bombay Code, No VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.	

Ad Valorem Fees—Contd.

Number.		Proper fee
12 Certificate under the Succession Certificate Act, 1889.	When the amount or value of any debt or security specified in the certificate under section 8 of the Act does not exceed five thousand rupees.	Two per centum on such amount or value, and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.
	When the amount or value exceeds five thousand rupees.	Three per centum on such amount or value, and four and a half per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.
		Note—(1) The amount of a debt is its amount, including interest, on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained
		(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act; and where such a power has been so conferred, whether the power, is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.

Table of rates of 'ad valorem' fees leviable on the institution of suits

(AS AMENDED BY THE MADRAS ACT, V OF 1922)

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee under Madras Act V of 1922	
Rs.	Rs.	Rs.	A.
	5	0	8
5	10	1	1
10	15	1	10
15	20	2	3
20	25	2	12
25	30	3	5
30	35	3	14
35	40	4	7
40	45	5	0
45	50	5	9
50	55	6	2
55	60	6	11
60	65	7	4
65	70	7	13
70	75	8	6
75	80	8	15
80	85	9	8
85	90	10	1
90	95	10	10
95	100	11	3
100	110	12	5
110	120	13	7
120	130	14	9
130	140	15	11
140	150	16	13
150	160	17	15
160	170	19	1
170	180	20	3
180	190	21	5
190	200	22	7
200	210	23	9
210	220	24	11
220	230	25	13
230	240	26	15
240	250	28	1
250	260	29	3
260	270	30	5
270	280	31	7
280	290	32	9
290	300	33	11
300	310	34	13
310	320	35	15
320	330	37	1
330	340	38	3
340	350	39	5
350			
360			

Table of rates of 'ad valorem' fees leviable on the institution of suits.

(AS AMENDED BY THE MADRAS ACT, V OF 1922)

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee under Madras Act V of 1922.
Rs.	Rs	Rs A.
370	380	42 11
380	390	43 13
390	400	44 15
400	410	46 1
410	420	47 3
420	430	48 5
430	440	49 7
440	450	50 9
450	460	51 11
460	470	52 13
470	480	53 15
480	490	55 1
490	500	56 3
500	510	57 5
510	520	58 7
520	530	59 9
530	540	60 11
540	550	61 13
550	560	62 15
560	570	64 1
570	580	65 3
580	590	66 5
590	600	67 7
600	610	68 9
610	620	69 11
620	630	70 13
630	640	71 15
640	650	73 1
650	660	74 3
660	670	75 5
670	680	76 7
680	690	77 9
690	700	78 11
700	710	79 13
710	720	80 15
720	730	82 1
730	740	83 3
740	750	84 5
750	760	85 7
760	770	86 9
770	780	87 11
780	790	88 13
790	800	89 15
800	810	91 1
810	820	92 3
820	830	93 5
830	840	94 7

Table of rates of 'ad valorem' fees leviable on the institution of suits.

(AS AMENDED BY THE MADRAS ACT, V OF 1922)

When the amount or value of the subject-matter exceeds.	But does not exceed	Proper fee under Madras Act V of 1922.
Rs.	Rs.	Rs. A.
840	850	95 9
850	860	96 11
860	870	97 13
870	880	98 15
880	890	100 1
890	900	101 3
900	910	102 5
910	920	103 7
920	930	104 9
930	940	105 11
940	950	106 13
950	960	107 15
960	970	109 1
970	980	110 3
980	990	111 5
990	1,000	112 7
1,000	1,100	119 15
1,100	1,200	127 7
1,200	1,300	134 15
1,300	1,400	142 7
1,400	1,500	149 15
1,500	1,600	157 7
1,600	1,700	164 15
1,700	1,800	172 7
1,800	1,900	179 15
1,900	2,000	187 7
2,000	2,100	194 15
2,100	2,200	202 7
2,200	2,300	209 15
2,300	2,400	217 7
2,400	2,500	224 15
2,500	2,600	232 7
2,600	2,700	239 15
2,700	2,800	247 7
2,800	2,900	254 15
2,900	3,000	262 7
3,000	3,100	269 15
3,100	3,200	277 7
3,200	3,300	284 15
3,300	3,400	292 7
3,400	3,500	299 15
3,500	3,600	307 7
3,600	3,700	314 15
3,700	3,800	322 7
3,800	3,900	329 15
3,900	4,000	337 7
4,000	4,100	344 15

Table of rates of 'ad valorem' fees leviable on the institution of suits.

(AS AMENDED BY THE MADRAS ACT, V OF 1922)

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee under Madras Act V of 1922.
Rs.	Rs	Rs. A.
4,100	4,200	352 7
4,200	4,300	359 15
4,300	4,400	367 7
4,400	4,500	374 15
4,500	4,600	382 7
4,600	4,700	389 15
4,700	4,800	397 7
4,800	4,900	404 15
4,900	5,000	412 7
5,000	5,250	427 7
5,250	5,500	442 7
5,500	5,750	457 7
5,750	6,000	472 7
6,000	6,250	487 7
6,250	6,500	502 7
6,500	6,750	517 7
6,750	7,000	532 7
7,000	7,250	547 7
7,250	7,500	562 7
7,500	7,750	577 7
7,750	8,000	592 7
8,000	8,250	607 7
8,250	8,500	622 7
8,500	8,750	637 7
8,750	9,000	652 7
9,000	9,250	667 7
9,250	9,500	682 7
9,500	9,750	697 7
9,750	10,000	712 7
10,000	10,500	734 15
10,500	11,000	757 7
11,000	11,500	779 15
11,500	12,000	802 7
12,000	12,500	824 15
12,500	13,000	847 7
13,000	13,500	869 15
13,500	14,000	892 7
14,000	14,500	914 15
14,500	15,000	937 7
15,000	15,500	959 15
15,500	16,000	982 7
16,000	16,500	1,004 15
16,500	17,000	1,027 7
17,000	17,500	1,049 15
17,500	18,000	1,072 7
18,000	18,500	1,094 15
18,500	19,000	1,117 7

Table of rates of 'ad valorem' fees leviable on the institution of suits.

(AS AMENDED BY THE MADRAS ACT, V OF 1922)

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee under Madras Act V of 1922.
Rs.	Rs.	Rs. A.
19,000	19,500	1,139 15
19,500	20,000	1,162 7
20,000	21,000	1,192 7
21,000	22,000	1,222 7
22,000	23,000	1,252 7
23,000	24,000	1,282 7
24,000	25,000	1,312 7
25,000	26,000	1,342 7
26,000	27,000	1,372 7
27,000	28,000	1,402 7
28 000	29 000	1,432 7
29,000	30,000	1,462 7
30,000	32,000	1,492 7
32,000	34,000	1,522 7
34,000	36,000	1,552 7
36,000	38,000	1,582 7
38,000	40,000	1,612 7
40,000	42,000	1,642 7
42,000	44,000	1,672 7
44,000	46,000	1,702 7
46,000	48,000	1,732 7
48,000	50 000	1,762 7

When the amount or value of the subject-matter exceeds Rs 50,000, for every five thousand rupees or part thereof in excess of fifty thousand rupees—thirty rupees

TABLE OF RATES OF *AD VALOREM* FEES LEVIABI

(b) on plaints, etc , mentioned in Article 2 of this Schedule.

When the amount or value of the subject-matter exceeds	But does not exceed	V
Rs	Rs	
	5	
5	10	
10	15	2
15	20	8
20	25	
25	30	4
30	35	
35	40	
40	45	
45	50	

TABLE OF RATES OF *AD VALOREM* FEES LEVIABLE.

(b) on plaints, etc., mentioned in Article 2 of this Schedule.

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee under Madras Act V of 1922.
Rs	Rs.	Rs. A
50	55	4 2
55	60	4 8
60	65	4 14
65	70	5 4
70	75	5 10
75	80	6 0
80	85	6 6
85	90	6 12
90	95	7 2
95	100	7 8
100	110	8 4
110	120	9 0
120	130	9 12
130	140	10 8
140	150	11 4
150	160	12 0
160	170	12 12
170	180	13 8
180	190	14 4
190	200	15 0
200	210	15 12
210	220	16 8
220	230	17 4
230	240	18 0
240	250	18 12
250	260	19 8
260	270	20 4
270	280	21 0
280	290	21 12
290	300	22 8
300	310	23 4
310	320	24 0
320	330	24 12
330	340	25 8
340	350	26 4
350	360	27 0
360	370	27 12
370	380	28 8
380	390	29 4
390	400	30 0
400	410	30 12
410	420	31 8
420	430	32 4
430	440	33 0
440	450	33 12
450	460	34 8
460	470	35 4
470	480	36 0
480	490	36 12
490	500	37 8

SCHEDULE II.

Fixed Fees

Number.		Proper fee.
1. Application or petition	(a) When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings,	One anna.
	or when presented to any officer of Land-revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement,	Two annas.
	or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservanty or improvement;	One anna.
	or when presented to any Civil Court other than a principal Civil Court of original jurisdiction or to any Court of Small Causes constituted under Act No IX of 1887, or to a Collector or other	Two annas.

Fixed Fees.—Contd.

Number.		Proper fee.
1. Application—*contd.*	officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is *less than fifty rupees*;	
	or when presented to any Civil, Criminal or Revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or officer, or of any other document on record in such Court or office.	Two annas.
	(*b*) When containing a complaint or charge of any offence other than an offence for which police officers may, under the Criminal Procedure Code, arrest without warrant, and presented to any Criminal Court; or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any Revenue officer having jurisdiction equal or subordinate to a Collector or to any Magistrate in his executive capacity, and not otherwise provided for by this Act;	In the case of a criminal complaint one rupee and in other cases twelve annas.

Fixed Fees—Contd.

Number.		Proper fee.
1. Application—*contd*	or to deposit in Court revenue or rent, or for determination by a Court of the amount of compensation to be paid by a landlord to his *tenant*.	Eight annas.
	(*c*) When presented to a Chief Commissioner or other Chief Controlling Revenue or Executive authority or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a division and not otherwise provided for by this Act.	One rupee eight annas
	(*d*) (*i*) When presented to a High Court under section 115 of the Code of Civil Procedure, 1908, for revision of an order.	
	(*a*) when the value of the suit or proceeding to which the order relates does not exceed thousand rupees;	Five rupees.
	(*b*) when the value of the suit or proceeding exceeds thousand rupees	Ten rupees
	(*ii*) when presented to to a High Court otherwise than under that section	Two rupees.

Fixed Fees.—Contd.

Number		Proper fee.
1. Application—*contd.*	officer of revenue in relation to any suit or case in which the *amount or value of* the subject-matter is less than fifty rupees;	
	or when presented to any Civil, Criminal or Revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or officer, or of any other document on record in such Court or office	Two annas.
	(*b*) When containing a complaint or charge of any offence other than an offence for which police officers may, under the Criminal Procedure Code, arrest without warrant, and presented to any Criminal Court;	
	or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any Revenue officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act;	In the case of a criminal complaint one rupee and in other cases twelve annas.

Fixed Fees—Contd.

Number.		Proper fee.
Application—*contd*	or to deposit in Court revenue or rent; or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant.	Eight annas.
	(*c*) When presented to a Chief Commissioner or other Chief Controlling Revenue or Executive authority or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a division and not otherwise provided for by this Act.	One rupee eight annas
	(*d*) (*i*) When presented to a High Court under section 115 of the Code of Civil Procedure, 1908, for revision of an order	
	(*a*) when the value of the suit or proceeding to which the order relates does not exceed thousand rupees,	Five rupees
	(*b*) when the value of the suit or proceeding exceeds thousand rupees	Ten rupees
	(*ii*) when presented to a High Court otherwise than under that section	Two rupees.

Fixed Fees—Contd.

Number.		Proper fee.
15 [*Rep. by Act 5 of 1908.*]		
16. [*Rep by Act 6 of 1899, s. 18 (1)*]		
17. Plaint or memorandum of appeal in a suit.		
(*i*) to alter or set aside a summary decision or order of any of the civil courts not established by Letters Patent or of any Revenue Court,		Fifteen rupees.
(*ii*) to alter or cancel any entry in a register of the names of the proprietors of revenue-paying estates		Fifteen rupees.
(*iii*) for relief under section 14 of the Religious Endowments Act, 1863, or under section 91 or section 92 of the Code of Civil Procedure, 1908.		Fifty rupees.
17-A. Plaint or memorandum of appeal in a suit— (*i*) to obtain a declaratory decree where no consequential relief is prayed, (*ii*) to set aside an award; (*iii*) to obtain a declaration that an alleged adoption is invalid or never in fact took place or to obtain a declaration that an adoption is valid.	When the plaint is presented to or the memorandum of appeal is against the decree of— (*a*) District Munsiff's Court or the City Civil Court.	Fifteen rupees.
	(*a*) District Court or a Sub-Court.	Hundred rupees if the value for purposes of jurisdiction is less than ten thousand rupees; five hundred rupees if such value is ten thousand rupees or upwards.

Fixed Fees—Contd.

Number		Proper fee.
17-B Plaint or memorandum of appeal in every suit where it is not possible to estimate at a money value the subject-matter in dispute and which is not otherwise provided for by this Act.	When the plaint is presented to or the memorandum of appeal is against the decree of—	
	a Revenue Court	Ten rupees.
	a District Munsiff's Court or the City Civil Court	Fifteen rupees.
	a District Court or a Sub-Court	One hundred rupees.

For application of Art 17-B, see *Vellora Karuppan Veettil v. Kallur Venkayil Challin*, 1924 M W.N. 210

18 Application under section 17 or section 20 of the second schedule of the Code of Civil Procedure, 1908	When presented to a District Munsiff's Court or the City Civil Court.	Fifteen rupees
19 Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908	When presented to a District Court or a Sub-Court	One hundred rupees.
20 Every petition under the Indian Divorce Act, 1869, except petitions under section 44 of the same Act and every memorandum of appeal under section 55 of the same Act		Twenty rupees.
21 Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865		Twenty rupees.

H

PUNJAB ACT, VII OF 1922.

Received the assent of His Excellency the Governor of the Punjab in Council on 23rd November 1922 and that of His Excellency the Viceroy and Governor-General on 9th December 1922 and was first published in the Punjab Government Gazette of the 22nd December, 1922.

THE COURT FEES (PUNJAB AMENDMENT) ACT, 1922.

PUNJAB ACT, VII OF 1922.

As amended by Punjab Acts I and VI of 1926.

An Act to amend the Court Fees Act, 1870, with reference to the scale of court-fees in the Punjab

Preamble

Whereas it is necessary to revise the scale of court-fees provided in the Court Fees Act, 1870, in its application to the Punjab in the manner hereinafter appearing.

It is hereby encated as follows.—

Short title, extent and commencement.

1. (1) This Act may be called the Court-fees (Punjab Amendment) Act, 1922.

(2) It extends to the Punjab.

(3) It shall come into force on such date as the Local Government may by notification appoint in this behalf.

Application of Act.

2. (1) The Court-fees Act, 1870, shall be amended in its application to the Punjab in the manner hereinafter provided

(2) The sections and schedules hereinafter referred to by number mean the sections and schedules respectively so numbered in the Court Fees Act, 1870, unless it shall appear to the contrary

Amendment of section 4.

3. In section 4 the word "one" shall be substituted for the word "two" between the word "of" and the word "or".

Amendment of section 18.

4. In section 18 between the word "of" and the word "unless" for the words "eight annas" the words "one rupee" shall be substituted

Re-enactment and amendment of Schedule I, Article 13

5. For Article 1 of Schedule I the following Article shall be substituted, namely:—

Number.		Proper fee
1 Plaint—Written statement pleading a set-off or memorandum or counter-claim of appeal (not otherwise provided for in this Act) or of cross objection presented to any Civil or Revenue Court except those mentioned in section 3.	When the amount or value of the subject-matter in dispute does not exceed five rupees	Six annas.
	When such amount or value exceeds five rupees, but does not exceed five hundred rupees for every five rupees or part thereof, in excess of five rupees, up to one hundred rupees	Six annas.
	When such amount or value exceeds one hundred rupees but does not exceed five hundred rupees, for every ten rupees or part thereof, in excess of one hundred rupees, up to five hundred rupees.	Twelve annas.
	When such amount or value exceeds five hundred rupees, for every ten rupees or part thereof, up to one thousand rupees	One rupee two annas.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees or part thereof, in excess of one thousand rupees, up to five thousand rupees.	Seven rupees eight annas

Number.		Proper fee
1. Plaint, etc.—*contd*	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees or part thereof, in excess of five thousand rupees, up to ten thousand rupees.	Fifteen rupees.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees or part thereof, in excess of ten thousand rupees up to twenty thousand rupees.	Twenty-two rupees eight annas
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees or part thereof, in excess of twenty thousand rupees, up to thirty thirty thousand rupees	Thirty rupees
	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees.	Thirty rupees.
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees.	Thirty rupees.

(2) The proviso, as to the maximum, after the ninth entry in the second column of the said Article in the same Schedule, shall be omitted.

Re-enactment and amendment of Schedule I, Article 13

6. Article 13 of Schedule I which was repealed by the Punjab Courts (Amendment) Act, 1912, in so far as it affected the Punjab is hereby re-enacted, save that for the words "Chief Court in the Punjab," the words "High Court of judicature at Lahore," for the figures "70" the figures "44" and for the figures "1884" the figures "1918" shall be substituted, and the words and figures "as amended by the Punjab Courts Act, 1899" shall be omitted.

Amendment of table of rates of *ad valorem* fees.

7. For the table of rates of *ad valorem* fees leviable on the institution of suits set forth at the end of schedule I, the table set forth in the schedule to this Act shall be substituted

8. In Article 1 of Schedule II—

Amendment of Schedule I, Article 1, clause (*a*).

(1) for the words "one anna" in the third column opposite clause (*a*) in the second column, the words "two annas" shall be substituted;

(2) for the word "eight annas" in the third column opposite (*b*) in the second column, the words "one rupee" shall be substituted,

Amendment of Schedule II, Article 1 (*d*)

(3) for clause (*d*), in the second column and the corresponding entry in the third column shall be substituted the following clause and entries namely:—

(*d*) When presented to the High Court—

(*i*) Under the Indian Companies Act, 1913, for winding up a Company,	One hundred rupees.
(*ii*) Under the same Act for taking some other judicial action	Five rupees.
(*iii*) In all other cases ...	Two rupees.

Amendment of Schedule II, Articles 4, 5 and 7

9. In the third column of Articles 4, 5 and 7 respectively of Schedule II—

for the words "eight annas" the words "one rupee" shall be substituted

Amendment of Schedule II, Article 10 clause (*a*).

10. In the third column of Article 10, Schedule II—

for the words "eight annas" opposite clause (*a*) in the second column, the words "one rupee" shall be substituted;

Amendment of Schedule II, Article 11 clauses (*a*) and (*b*)

11. In the third column of Article 11 of Schedule II—

(1) for the words "eight annas" opposite clause (*a*) in the second column, the words "one rupee" shall be substituted,

(2) for the words "two rupees" opposite clause (*b*) in the second column, the words "four rupees" shall be substituted

New Article to Schedule II.

12. The following new Article with the corresponding entry in the third column shall be added to the first column of Schedule II, namely:—

22	Plaint or memorandum of appeal in a suit by a reversioner under the Punjab Customary Law for a declaration in respect of an alienation of ancestral land	Twenty rupees.

The term "ancestral land" means land in respect of which, in order to enable the plaintiff to succeed, it is necessary for him to prove that the land was ancestral, in other words, that it was held by the common ancestor of himself and the last male owner, *Musst Jintan* v *Ahmad and another*, 106 I C 817 (819): 1928 A I R 221 (Lahore)

SCHEDULE.

Table of rates of 'ad valorem' fees leviable on the institution of suits

(See section 7 Punjab Amendment)

When the amount or value of the subject-matter exceeds.	But does not exceed	Proper fee under Punjab Act (VII of 1922)		
Rs.	Rs	Rs	A	P
	5	0	6	0
5	10	0	12	0
10	15	1	2	0
15	20	1	8	0
20	25	1	14	0
25	30	2	4	0
30	35	2	10	0
35	40	3	0	0
40	45	3	6	0
45	50	3	12	0
50	55	4	2	0
55	60	4	8	0
60	65	4	14	0
65	70	5	4	0
70	75	5	10	0
75	80	6	0	0
80	85	6	6	0
85	90	6	12	0
90	95	7	2	0
95	100	7	8	0
100	110	8	4	0
110	120	9	0	0
120	130	9	12	0
130	140	10	8	0
140	150	11	4	0
150	160	12	0	0
160	170	12	12	0
170	180	13	8	0
180	190	14	4	0
190	200	15	0	0
200	210	15	12	0
210	220	16	8	0
220	230	17	4	0
230	240	18	0	0
240	250	18	12	0
250	260	19	8	0
260	270	20	4	0
270	280	21	0	0
280	290	21	12	0
290	300	22	8	0
300	310	23	4	0
310	320	24	0	0

Table of rates of 'ad valorem' fees leviable on the institution of suits.

(See section 7 Punjab Amendment.)

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee under Punjab Act (VII of 1922).
Rs	Rs.	Rs. A. P.
320	330	24 12 0
330	340	25 8 0
340	350	26 4 0
350	360	27 0 0
360	370	27 12 0
370	380	28 8 0
380	390	29 4 0
390	400	30 0 0
400	410	30 12 0
410	420	31 8 0
420	430	32 4 0
430	440	33 0 0
440	450	33 12 0
450	460	34 8 0
460	470	35 4 0
470	480	36 0 0
480	490	36 12 0
490	500	37 8 0
500	510	57 6 0
510	520	58 8 0
520	530	59 10 0
530	540	60 12 0
540	550	61 14 0
550	560	63 0 0
560	570	64 2 0
570	580	65 4 0
580	590	66 6 0
590	600	67 8 0
600	610	68 10 0
610	620	69 12 0
620	630	70 14 0
630	640	72 0 0
640	650	73 2 0
650	660	74 4 0
660	670	75 6 0
670	680	76 8 0
680	690	77 10 0
690	700	78 12 0
700	710	79 14 0
710	720	81 0 0
720	730	82 2 0
730	740	83 4 0
740	750	84 6 0
750	760	85 8 0
760	770	86 10 0
770	780	87 12 0

Table of rates of 'ad valorem' fees leviable on the institution of suits

(See section 7 Punjab Amendment.)

When the amount or value of the subject-matter exceeds.	But does not exceed	Proper fee under Punjab Act (VII of 1922).		
Rs	Rs	Rs	A.	P
780	790	88	14	0
790	800	90	0	0
800	810	91	2	0
810	820	92	4	0
820	830	93	6	0
830	840	94	8	0
840	850	95	10	0
850	860	96	12	0
860	870	97	14	0
870	880	99	0	0
880	890	100	2	0
890	900	101	4	0
900	910	102	6	0
910	920	103	8	0
920	930	104	10	0
930	940	105	12	0
940	950	106	14	0
950	960	108	0	0
960	970	109	2	0
970	980	110	4	0
980	990	111	6	0
990	1,000	112	8	0
1,000	1,100	120	0	0
1,100	1,200	127	8	0
1,200	1,300	135	0	0
1 300	1,400	142	8	0
1,400	1,500	150	0	0
1,500	1,600	157	8	0
1 600	1,700	165	0	0
1,700	1,800	172	8	0
1 800	1,900	180	0	0
1 900	2,000	187	8	0
2 000	2,100	195	0	0
2 100	2,200	202	8	0
2 200	2,300	210	0	0
2 300	2,400	217	8	0
2 400	2,500	225	0	0
2,500	2,600	232	8	0
2 600	2,700	240	0	0
2 700	2,800	247	8	0
2 800	2,900	255	0	0
2 900	3,000	262	8	0
3 000	3,100	270	0	0
3,100	3,200	277	8	0
3 200	3,300	285	0	0
3,300	3,400	292	8	0

Table of rates of 'ad valorem' fees leviable on the institution of suits.

(See section 7 Punjab Amendment.)

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fees under Punjab Act (VII of 1922). Rs.	A.	P.
Rs	Rs			
3,400	3,500	300	0	0
3,500	3,600	307	8	0
3,600	3,700	315	0	0
3,700	3,800	322	8	0
3,800	3,900	330	0	0
3,900	4,000	337	8	0
4,000	4,100	345	0	0
4 100	4,200	352	8	0
4,200	4,300	360	0	0
4,300	4,400	367	8	0
4,400	4,500	375	0	0
4,500	4,600	382	8	0
4,600	4,700	390	0	0
4,700	4,800	397	8	0
4,800	4,900	405	0	0
4,900	5,000	412	8	0
5,000	5,250	427	8	0
5,250	5,500	442	8	0
5,500	5,750	457	8	0
5,750	6,000	472	8	0
6,000	6,250	487	8	0
6,250	6,500	502	8	0
6,500	6,750	517	8	0
6,750	7,000	532	8	0
7,000	7,250	547	8	0
7,250	7,500	562	8	0
7,500	7,750	577	8	0
7,750	8,000	592	8	0
8,000	8,250	607	8	0
8,250	8 500	622	8	0
8,500	8,750	637	8	0
8,750	9,000	652	8	0
9,000	9,250	667	8	0
9,250	9 500	682	8	0
9,500	9,750	697	8	0
9,750	10,000	712	8	0
10 000	10,500	735	0	0
10 500	11 000	757	8	0
11,000	11,500	780	0	0
11,500	12,000	802	8	0
12,000	12,500	825	0	0
12,500	13,000	847	8	0
13 000	13 500	870	0	0
13 500	14,000	892	8	0
14,000	14,500	915	0	0
14,500	15,000	937	8	0

Table of rates of 'ad valorem' fees leviable on the institution of suits.

(See section 7 Punjab Amendment)

When the amount or value of the subject-matter exceeds	But does not exceed.	Proper fee under Punjab Act (VII of 1922).		
Rs.	Rs	Rs	A.	P
15,000	15,500			
15,500	16,000	982	8	0
16,000	16,500	1,005	0	0
16,500	17,000	1,027	8	0
17,000	17,500	1,050	0	0
17,500	18,000	1,072	8	0
18,000	18,500	1,095	0	0
18,500	19,000	1,117	8	0
19,000	19,500	1,140	0	0
19,500	20,000	1,162	8	0
20,000	21,000	1,192	8	0
21,000	22,000	1,222	8	0
22,000	23,000	1,252	8	0
23,000	24,000	1,282	8	0
24,000	25,000	1,312	8	0
25,000	26,000	1,342	8	0
26,000	27,000	1,372	8	0
27,000	28,000	1,402	8	0
28,000	29,000	1,432	8	0
29,000	30,000	1,462	8	0
30,000	32,000	1,492	8	0
32,000	34,000	1,522	8	0
34,000	36,000	1,552	8	0
36,000	38,000	1,582	8	0
38,000	40,000	1,612	8	0
40,000	42,000	1,642	8	0
42,000	44,000	1,672	8	0
44,000	46,000	1,702	8	0
46,000	48,000	1,732	8	0
48,000	50,000	1,762	8	0
50,000	55,000	1,792	8	0
55,000	60,000	1,822	8	0
60,000	65,000	1,852	8	0
65,000	70,000	1,882	8	0
70,000	75,000	1,912	8	0
75,000	80,000	1,942	8	0
80,000	85,000	1,972	8	0
85,000	90,000	2,002	8	0
90,000	95,000	2,032	8	0
95,000	1,00,000	2,062	8	0
1,00,000	1,05,000	2,092	8	0
1,05,000	1,10,000	2,122	8	0
1,10,000	1,15,000	2,152	8	0
1,15,000	1,20,000	2,182	8	0
1,20,000	1,25,000	2,212	8	0
1,25,000	1,30,000	2,242	8	0

Table of rates of 'ad valorem' fees leviable on the institution of suits.

(See section 7 Punjab Amendment.)

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee under Punjab Act (VII of 1922).		
Rs.	Rs	Rs.	A.	P.
1,30,000	1,35,000	2,272	8	0
1,35,000	1,40,000	2,302	8	0
1,40,000	1,45,000	2,332	8	0
1,45,000	1,50,000	2,362	8	0
1,50,000	1,55,000	2,392	8	0
1,55,000	1,60,000	2,422	8	0
1,60,000	1,65,000	2,452	8	0
1,65,000	1,70,000	2,482	8	0
1,70,000	1,75,000	2,512	8	0
1,75,000	1,80,000	2,542	8	0
1,80,000	1,85,000	2,572	8	0
1,85,000	1,90,000	2,602	8	0
1,90,000	1,95,000	2,632	8	0
1,95,000	2,00,000	2,662	8	0
2,00,000	2,05,000	2,692	8	0
2,05,000	2,10,000	2,722	8	0
2,10,000	2,15,000	2,752	8	0
2,15,000	2,20,000	2,782	8	0
2,20,000	2,25,000	2,812	8	0
2,25,000	2,30,000	2,842	8	0
2,30,000	2,35,000	2,872	8	0
2,35,000	2,40,000	2,902	8	0
2,40,000	2,45,000	2,932	8	0
2,45,000	2,50,000	2,962	8	0
2,50,000	2,55,000	2,992	8	0
2,55,000	2,60,000	3,022	8	0
2,60,000	2,65,000	3,052	8	0
2,65,000	2,70,000	3,082	8	0
2,70,000	2,75,000	3,112	8	0
2,75,000	2,80,000	3,142	8	0
2,80,000	2,85,000	3,172	8	0
2,85,000	2,90,000	3,202	8	0
2,90,000	2,95,000	3,232	8	0
2,95,000	3,00,000	3,262	8	0
3,00,000	3,05,000	3,292	8	0
3,05,000	3,10,000	3,322	8	0
3,10,000	3,15,000	3,352	8	0
3,15,000	3,20,000	3,382	8	0
3,20,000	3,25,000	3,412	8	0
3,25,000	3,30,000	3,442	8	0
3,30,000	3,35,000	3,472	8	0
3,35,000	3,40,000	3,502	8	0
	3,45,000	3,532	8	0
	3,50,000	3,562	8	0
	3,55,000	3,592	8	0

Table of rates of ad valorem fees leviable on the institution of suits

(See section 7 Punjab Amendment)

When the amount or value of the subject-matter exceeds	But does not exceed	Proper fee under Punjab Act (VII of 1922).
Rs	Rs	Rs A. P
3,55,000	3,60,000	3,622 8 0
3,60,000	3,65,000	3,652 8 0
3,65,000	3,70,000	3,682 8 0
3,70,000	3,75,000	3,712 8 0
3,75,000	3,80,000	3,742 8 0
3,80,000	3,85,000	3,772 8 0
3,85,000	3,90,000	3,802 8 0
3,90,000	3,95 000	3,832 8 0
3,95,000	4,00,000	3,862 8 0

And when the amount or value of the subject-matter exceeded Rs 4,00,000 the proper fee leviable shall be Rs 3,862 annas 8 plus Rs 30 for each five thousand rupees or part thereof in excess of Rs 4,00,000

I

UNITED PROVINCES COURT-FEES (AMENDMENT) ACT, 1932.

UNITED PROVINCES ACT NO. III OF 1932.

(*As amended by Act No. XI of 1934*).

[PASSED BY THE LOCAL LEGISLATURE OF THE UNITED PROVINCES OF AGRA AND OUDH].

Received the assent of the Governor of the United Provinces of Agra and Oudh on April 14, 1932, and of the Governor-General on April 25, 1932, and was published under section 81 of the Government of India Act on May 7, 1932.

An Act further to amend the Court Fees Act, 1870, in its application to the United Provinces

Preamble

Whereas it is expedient further to amend the Court Fees Act, 1870, in its application to the United Provinces

And whereas the previous sanction of the Governor-General has been obtained, under section 80-A, sub-section (3), of the Government of India Act, to the passing of this Act;

It is hereby enacted as follows:—

Title, extent and commencement.

1. (1) This Act may be called the United Provinces Court Fees (Amendment) Act, 1932.

(2) It extends to the territories for the time being administered by the Local Government of the United Provinces.

(3) It shall come into force on the first day of May, 1932, and shall remain in force up till June 30, 1936.

Amendment of section 6 of Act VII of 1870

2. To section 6 of the Court Fees Act, 1870, hereinafter referred to as "the said Act," the following proviso shall be added, namely,—

Act XXII of 1886. U. P. Act III of 1926. U. P. Act III of 1901.

Provided that where such document relates to any suit, appeal or other proceeding under the Oudh Rent Act, 1886, the Agra Tenancy Act, 1926, or the United Provinces Land Revenue Act, 1901, the proper fee shall be three-quarters of the fee indicated in either of the said Schedules except where the document is of any of the kinds

specified as chargeable in the first schedule and the amount or value of the subject-matter of the suit, appeal or proceeding to which it relates exceeds the value of Rs 500:

Provided further that the fee payable in respect of any such document as is mentioned in the foregoing proviso shall not be less than that indicated by either of the said schedules before the commencement of this Act

Amendment of paragraph (v) of section 7 of Act VII of 1870

3. In paragraph (v) of section 7 of the said Act the word "ten" in clause (*a*) shall be read as "twenty" and the word "five" in clause (*b*) shall be read as "six"

Amendment of paragraph (ix) of section 7 of Act VII of 1870

4. For paragraph (ix) of section 7 of the said Act the following clause shall be substituted, namely,—

(ix) In suits against a mortgagee for the recovery of the property mortgaged according to the principal money experssed to be secured by the instrument of mortgage

(ix) (*a*) In suits by a mortgagee to foreclose the mortgage, or where the mortgage is made by conditional sale, to have the sale declared absolute, according to the total amount claimed by way of principal and interest

Amendment of section 18 of Act VII of 1870

5. In section 18 of the said Act for the words "eight annas" the words "twelve annas" shall be substituted.

Amendment of Schedule I to Act VII of 1870

6. In Schedule I to the said Act the following amendments shall be made, namely,—

(*i*) In Article 1 for the entries in the second and third columns the entries shown in the first and second columns of Schedule A to this Act shall be substituted

(*ii*) In Article 6 for the words "four", "eight" and "one rupee" in the third column the words "six", "twelve" and "one rupee eight annas", respectively, shall be substituted.

(*iii*) In Article 7 for the words "eight" and "one rupee" in the third column the words "twelve" and "one rupee eight annas", respectively, shall be substituted

(*iv*) In Article 8 for the word "eight" in the third column the word "twelve" shall be substituted

(*v*) In Article 11 for the entries above the proviso in the second and third columns the following shall be substituted:—

	1. When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, but does not exceed ten thousand rupees; and	Two per centum on such amount or value.
	2. When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees; and	Two and one-half per centum on such amount or value.
	3. When such amount or value exceeds fifty thousand rupees, but does not exceed one lakh of rupees, for the portion of such amount or value which is in excess of fifty thousand rupees; and	Three per centum on such amount or value.
	4 When such amount or value exceeds a lakh of rupees, for the portion of such amount or value which is in excess of a lakh of rupees,	Four per centum on such amount or value.

(vi) In Article 12 for the entries in the first and second columns and for the first paragraph in the third column the following shall be substituted:—

12. Certificate under the Indian Succession Act, 1925.	1 When the amount or value of any debt or security specified in the certificate under section 374 of the Act does not exceeed twenty thousand rupees, and	Two per centum on such amount or value and three per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act.
	2. When such amount or value exceeds twenty thousand rupees, but does not exceed fifty thousand rupees, for the portion of such amount or value which is in excess of twenty thousand rupees; and	Two and a half per centum on such amount or value and three and a three-quarters per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act.
	3 When such amount or value exceeds fifty thousand rupees, but	Three per centum on such amount or value and four and a half per

does not exceed a lakh of rupees, for the portion of such amount or value which is in excess of fifty thousand rupees,	centum on the amount or value of any debt or security to which th certificate is extended under section 376 of the Act.
and	
When such amount or value exceeds a lakh of rupees, for the portion of such amount or value which is in excess of a lakh of rupees.	Four per centum on such amount or value and six per centum on the amount or value of any debt or security to which the certificate is extended under section *376 of the Act.*

(*vii*) For the table of *ad valorem* fees leviable on the institution of suits the table shown in Schedule B to this Act shall be substituted

Amendment of Schedule II to Act VII of 1870

7. In Schedule II to the said Act the following amendments shall be made, namely:—

(*i*) In Article 1 for the words "one anna", "eight annas" and "one rupee" in the third column the words "two annas", "twelve annas" and "one rupee and eight annas", respectively, shall be substituted: and the following clause shall be substituted for clause (*d*):—

When presented to the Board of Revenue for revision of a judgment or order,	Three rupees.
When presented to a High Court—	
(1) Under the Indian Companies Act, 1913 (Act VII of 1913), for	Fifty rupees
Procedure, 1908 (Act V of 1908), for revision of an order.	
(3) In any other case.	Three rupees.

(*ii*) In Article I-A for the words "twelve annas", in the third column the words "one rupee two annas" shall be substituted.

(*iii*) In Articles 5, 6 and 7 for the word "eight" in the third column the word "twelve" shall be substituted.

(*iv*) In Article 10 for the words "eight annas" "one rupee" and "two rupees" in the third column, th

words "twelve annas", "one rupee eight annas" and "three rupees", respectively, shall be substituted

(v) For Article 11, the following shall be substituted:—

11. Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree and is presented,—	(a) to any Civil Court other than a High Court or to any Revenue Court or Executive Officer other than a Commissioner of the division or Chief Controlling Revenue or Executive Authority:	Twelve annas.
	(b) to a Commissioner of the division	Two rupees.
	(c) to a High Court or to a Chief Controlling Executive or Revenue Authority:	Three rupees.

(vi) The bracket opposite Articles 12, 13 and 14 in the second column shall be omitted and for Article 12 the following shall be substituted:—

12 Caveat	Where the amount or value of the property in respect of which the caveat is lodged—	
	(a) does not exceed five *thousand rupees*	Five rupees.
	(b) exceeds five thousand rupees.	Ten rupees.

(vii) For Article 14 the following shall be substituted, namely,—

14 Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866		Seven rupees eight annas

(viii) In Article 17 for the words "Ten rupees" in the third column, the words "Fifteen rupees" shall be substituted, and the following proviso shall be added:—

Provided that in a suit filed before a High Court under its original jurisdiction the fee chargeable under this Article shall be one hundred rupees.

(ix) In Articles 18 and 19 for the word "ten" in the third column the word "fifteen" shall be substituted

(x) In Articles 20 and 21 for the word "twenty" in the third column the word "thirty" shall be substituted

SCHEDULE A.

When such amount or value of the subject matter in dispute does not exceed five rupees.	Six annas.

When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees.	Six annas.
When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees up to two hundred rupees	Twelve annas.
When such amount or value exceeds two hundred rupees, for every ten rupees, or part *thereof, in excess of two hundred rupees up* to five hundred rupees	One rupee.
When such amount or value exceeds five hundred rupees, for every ten rupees, or part thereof, in excess of five hundred rupees, up to one thousand rupees.	One rupee four annas.
When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand *rupees, up to five thou-*sand rupees	Six rupees four annas.
When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees	Twelve rupees eight annas
When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees	Eighteen rupees twelve annas.

When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees.	Twenty-five rupees.
When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand runees, up to fifty thousand rupees.	Twenty-five rupees.
When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees:	Thirty-one rupees four annas.

Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be four thousand five hundred rupees

SCHEDULE B.

Table of rates of ad valorem fees leviable on the institution of suits

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee.	
Rs.	Rs	Rs.	A.
	5	0	6
5	10	0	12
10	15	1	2
15	20	1	8
20	25	1	14
25	30	2	4
30	35	2	10
35	40	3	0
40	45	3	6
45	50	3	12
50	55	4	2
55	60	4	8
60	65	4	14
65	70	5	4
70	75	5	10
75	80	6	0
80	85	6	6
85	90	6	12
90	95	7	2
95	100	7	8
100	110	8	4
110	120	9	0
120	130	9	12
130	140	10	8
140	150	11	4
150	160	12	0
160	170	12	12
170	180	13	8
180	190	14	4
190	200	15	0
200	210	16	0
210	220	17	0
220	230	18	0
230	240	19	0
240	250	20	0
250	260	21	0
260	270	22	0
270	280	23	0
280	290	24	0
290	300	25	0
300	310	26	0
310	320	27	0
320	330	28	0
330	340	29	0
340	350	30	0
350	360	31	0
360	370	32	0

SCHEDULE B.

Table of rates of ad valorem fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee.
Rs	Rs.	Rs. A
370	380	33 0
380	390	34 0
390	400	35 0
400	410	36 0
410	420	37 0
420	430	38 0
430	440	39 0
440	450	40 0
450	460	41 0
460	470	42 0
470	480	43 0
480	490	44 0
490	500	45 0
500	510	46 4
510	520	47 8
520	530	48 12
530	540	50 0
540	550	51 4
550	560	52 8
560	570	53 12
570	580	55 0
580	590	56 4
590	600	57 8
600	610	58 12
610	620	60 0
620	630	61 4
630	640	62 8
640	650	63 12
650	660	65 0
660	670	66 4
670	680	67 8
680	690	68 12
690	700	70 0
700	710	71 4
710	720	72 8
720	730	73 12
730	740	75 0
740	750	76 4
750	760	77 8
760	770	78 12
770	780	80 0
780	790	81 4
790	800	82 8
800	810	83 12
810	820	85 0
820	830	86 4
830	840	87 8

SCHEDULE B

Table of rates of 'ad valorem 'fees leviable on the institution of suits

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee.
Rs.	Rs.	Rs. A.
840	850	88 12
850	860	90 0
860	870	91 4
870	880	92 8
880	890	93 12
890	900	95 0
900	910	96 4
910	920	97 8
920	930	98 12
930	940	100 0
940	950	101 4
950	960	102 8
960	970	103 12
970	980	105 0
980	990	106 4
990	1,000	107 8
1,000	1,100	113 12
1,100	1,200	120 0
1,200	1,300	126 4
1,300	1,400	132 8
1,400	1,500	138 12
1,500	1,600	145 0
1,600	1,700	151 4
1,700	1,800	157 8
1,800	1,900	163 12
1,900	2,000	170 0
2,000	2,100	176 4
2,100	2,200	182 8
2,200	2,300	188 12
2,300	2,400	195 0
2,400	2,500	201 4
2,500	2,600	207 8
2,600	2,700	213 12
2,700	2,800	220 0
2,800	2,900	226 4
2,900	3,000	232 8
3,000	3,100	238 12
3,100	3,200	245 0
3,200	3,300	251 4
3,300	3,400	257 8
3,400	3,500	263 12
3,500	3,600	270 0
3,600	3,700	276 4
3,700	3,800	282 8
3,800	3,900	288 12
3,900	4,000	295 0
4,000	4,100	301 4

SCHEDULE B

Table of rates of 'ad valorem' fees leviable on the institution of suits

When the amount or value of the subject-matter exceeds	But does not exceed.	Proper fee.
Rs	Rs.	Rs. A
4,100	4,200	307 8
4,200	4,300	313 12
4,300	4,400	320 0
4,400	4,500	326 4
4,500	4,600	332 8
4,600	4,700	338 12
4,700	4,800	345 0
4,800	4,900	351 4
4,900	5,000	357 8
5,000	5,250	370 0
5,250	5,500	382 8
5 500	5,750	395 0
5 750	6,000	407 8
6,000	6 250	420 0
6,250	6,500	432 8
6 500	6,750	445 0
6,750	7,000	457 8
7,000	7,250	470 0
7 250	7,500	482 8
7,500	7,750	495 0
7,750	8,000	507 8
8 000	8,250	520 0
8 250	8,500	532 8
8 500	8,750	545 0
8 750	9,000	557 8
9 000	9,250	570 0
9 250	9,500	582 8
9 500	9,750	595 0
9 750	10,000	607 8
10 000	10,500	626 4
10 500	11,000	645 0
11 000	11,500	663 12
11 500	12,000	682 8
12 000	12,500	701 4
12 500	13,000	720 0
13 000	13,500	738 12
13 500	14,000	757 8
14 000	14,500	776 4
14 500	15,000	795 0
15 000	15,500	813 12
15 500	16,000	832 8
16 000	16,500	851 4
16 500	17,000	870 0
17,000	17,500	888 12
17 500	18,000	907 8
18 000	18 500	926 4
18,500	19,000	915 0

SCHEDULE B

Table of rates of 'ad valorem' fees leviable on the institution of suits

When the amount or value of the subject-matter exceeds.	But does not exceed	Proper fee
Rs.	Rs.	Rs. A.
19,000	19,500	963 12
19,500	20,000	982 8
20,000	21,000	1,007 8
21,000	22,000	1,032 8
22,000	23,000	1,057 8
23,000	24,000	1,082 8
24 000	25,000	1,107 8
25,000	26,000	1,132 8
26,000	27,000	1,157 8
27,000	28,000	1,182 8
28,000	29,000	1,207 8
29,000	30,000	1,232 8
30,000	32,000	1,257 8
32,000	34,000	1,282 8
34,000	36,000	1,307 8
36,000	38,000	1,332 8
38,000	40,000	1,357 8
40,000	42,000	1,382 8
42,000	44,000	1,407 8
44,000	46,000	1,432 8
46,000	48,000	1,457 8
48,000	50,000	1,482 8
50 000	55,000	1,513 12
55 000	60,000	1,545 0
60,000	65,000	1,576 4
65,000	70,000	1,638 12
70,000	75,000	1,607 8
75,000	80 000	1,670 0
80,000	85,000	1,701 4
85,000	90 000	1,732 8
90,000	95,000	1,763 12
95,000	1,00,000	1,795 0

And the fee increases at the rate of thirty-one rupees four annas for every five thousand rupees, or part thereof, for example—

Rs.	Rs. A
2,00,000	2,420 0
3,00,000	3,045 0
4,00,000	3 670 0
5,00,000	4,295 0
5,35,000	4,500 0

Added by Sec. 2 of the U. P. Act VII of 1933

Number.			Proper Fee.
22	*Election petition.*	(*a*) A petition presented to the Commissioner of a division or to the Collector of a district (or to some other person or tribunal specially appointed by rule in this behalf) under sub-section (2) of the section 22 of the United Provinces Municipalities Act (Act II of 1916), questioning the election of any person as a member of a Municipal Board.	One hundred rupees.
		(*b*) A petition presented to a District Judge (or to some other person or tribunal specially appointed by rule in this behalf) or to a Munsiff under sub-section (2) of section 18 of the District Boards Act (Act X of 1922) questiong the election of any person as a member of a district board	One hundred rupees.

THE
SUITS VALUATION ACT, 1887.

[*11th February, 1887.*]

[ACT NO. VII OF 1887].

As modified up to June 1935.

An Act to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of courts with respect thereto.

Where it is expedient to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto; It is hereby enacted as follows:—

Title. **1.** This Act may be called the Suits Valuation Act, 1887.

NOTES.

Extent.—For Statement of Objects and Reasons, *See* Gazette of India, 1886, Pt. V, p. 791; for Report of the Select Committee *see ibid*, 1887, Pt. IV, p. 18; and for Proceedings in Council *see ibid*, 1886, Supplement, pp 1131 and 1155, and *ibid*, 1887, Pt VI, pp 16 and 21.

This Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), see section 4 and the First Schedule.

It had previously been extended there, by notification under section 5 of the Scheduled Districts Act, 1874 (XIV of 1874), printed in General Acts, Vol. II, Ed. 1898, p 477, *see* Burma Gazette, 1888, Pt. I, p. 362, and Gazette of India 1888, Pt. I, p 371.

It has been declared in force in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890).

Scope.—Part I of the Suits Valuation Act empowers the Local Government to make rules for determining the value land for purposes of jurisdiction in certain classes of suits, F

II declares that in suits not coming within paragraphs v, vi, ix and paragraph x cl. (d) of section 7 of the Court Fees Act, the value as determinable for the computation of court-fees and the value for the purposes of jurisdiction shall both be the same, *Musst Ladli Begum* v. *Ram Das and others,* 1925 A I R. 488 (Patna)): 1925 Pat. C.W.N. 167: 6 Pat.L.T. 448: 90 Ind Cas 321

Sonthal Perganas.—It is doubtful whether the Suits Valuation Act applies to the Sonthal Perganas, still the spirit of that Act can be held to be applicable and jurisdiction should follow the valuation on which the court-fees were paid; and in order to find out whether the valuation is in excess of Rs 1,000 the plaint and not the issues are to be examined. An objection to the valuation would not be entertained unless it is taken before the settlement of issues, *Narayan Jha Narone* v. *Jagni Prasad Jha,* (1933) 13 Patna 329: 15 P.L T 131: 148 I.C 579: 1934 A I R 204 (Pat) S B.

PART I.

SUITS RELATING TO LAND.

Extent and commencement of Part I

2. This Part shall extend to such local areas, and come into force therein on such dates as the Governor General in Council, by notification in the Gazette of India, directs.

NOTES.

Extent.—Part I of the Act has, under section 2 been declared to extend to the Punjab, which then included the North-West Frontier Province, and to come into force therein on the 1st day of March, 1889, *see* Gazette of India, 1889, Pt. I, p 107.

General.—A suit ought to be valued for the purpose of determining the jurisdiction of a Court, not according to the special rules of the Court Fees Act but according to the market value of the subject of a suit, *Kalu Bin Bhiwaji* v. *Visram Mawaji,* 1 Bom. 543; *Nanhoon Singh* v. *Toofanee Singh,* 20 W.R C.R. 33: 12 B L R. 113.

The plaintiff's estimate of the value of the land, if contrary to the market value according to the rules, cannot be allowed to operate to the prejudice of the defendant at any stage of the suit, *Bhagwan Puri and others* v. *Secretary of State for India in*

Council, 49 All. 398 25 A L J. 258· 100 I C 35: 1927 A I.R. 308 (All)

The value of the subject-matter of dispute.—The actual value of the estate, to which the plaintiff claims to be entitled, and not the value which it may eventually represent to the plaintiff, is the value of the subject matter, *Bai Mahkor* v. *Bulabi Chaku*, 1 Bom 538

But the case is different when the suit falls under section 8 of the Suits Valuation Act Then the valuation for the purposes of jurisdiction and for the purposes of court-fees shall be the same as a method of valuation for the purposes of court-fees is prescribed by the Court Fees Act itself, *Sailendra Nath Mitra* v. *Ram Charan Pal*, 34 C L J 95. 25 C W N 168: 66 Ind Cas 26

Prima facie the valuation by the plaintiff determines the jurisdiction If the defendant did not raise any objection then it cannot be said that the trial was without jurisdiction, *Khundaijat-ul-Kubra* v *Amina Khatun*, 46 All 250: 22 A.L J. 122: 80 I C 413· 1924 A I R 388 (All)

Prima facie it is the valuation by the plaintiff which determines the jurisdiction and such jurisdiction continues, whatever the event, unless a different principle, comes into operation to prevent such a result, *Sarada Sundari* v *Akramunnessa*, 51 Cal. 137 78 I C 747 28 C W N 710

Statement made in a petition—The plaintiff is not concluded by statements made in petition at one particular stage *of the proceedings as the question of the amount of court-fees* payable as the valuation to be made for that purpose is one of law and not of fact, *Girish Chandra Sanyal* v. *The Secretary of State for India in Council*, 105 I.C 80.

Jurisdiction—How determined.—Jurisdiction of suits is governed by statements made in the plaint and has no reference to the plea set up by the defendant The valuation given in the plaint determines the forum of appeal, *Jag Lal* v. *Har Narayan Singh*, 10 All 524. What *prima facie* determines the jurisdiction of a Court is the claim, or the subject-matter of the claim, as estimated by the plaintiff and that determination having given the jurisdiction, the jurisdiction itself continues whatever the event of the suit This includes *bona fide* mistakes by the plaintiff but the plaintiff cannot oust jurisdiction by making unwarrantable additions to the claim which cannot be sustained, *Lakshman Bhatkar* v *Babaji Bhatkar*, 8 Bom. 31.

Where the plaint is intentionally presented to a wrong Court, the plaint is to be returned by Court to the plaintiff to be presented to proper Court and the suit should not be dismissed *Jharia* v *Gopala*, 3 All L J. 511: 26 (1906) All W.N. 195.

One must look to the nature of the suit as brought not to the nature of the defence to determine whether a C had jurisdiction, *Bapuji Raghunath* v. *Kauvaji Edulji Umri* 15 Bom 400.

In the absence of rules under ss 3 & 4 of the Suits Val tion Act, 1887, the valuation of a suit is the money value of loss which the plaintiff apprehends would result to him, *R Sekhar Prosad Singh* v. *Sheonandan Dubey*, I L R. 2 Pat 1 1922 Pat C.W N 337: 4 P L T 71: 1 P.L R. 25: 73 I C 1923 A I R 137 (Patna)

Jurisdiction does not depend on the result of the suit on the defence set up, but on the nature of the claim as broug *Seth Harbax and another* v *Lachman and others*, 1925 A.I 183 (Nagpore) 82 I C. 201

The jurisdiction of a suit or appeal is generally determi by the valuation made in the plaint unless the suit is intentiona overvalued or undervalued, *Pitam Singh* v *Bishun Nara* 7 O W N 1188 130 I C 339: 1931 A.I.R. 58 (Oudh).

If the valuation is contested then it should be determin by the Court, but where the valuation can be ascertained correct then the plaintiff cannot be allowed to put a valuation he choos *Inayat Husain* v *Bashir Ahmad*, 1932 A.L J. 416: 1932 A I 413 (All)

An erroneous payment of court-fees does not affect jur diction, *Gopala Menon* v *Ramana Menon*, 1932 M.W.N 53: L W. 64: 138 I C 136. 1932 A.I.R. 217 (Mad.).

Different valuations.—The plaintiff is not entitled to p a higher valuation for the purpose of jurisdiction and a low valuation for the purpose of court-fees (where these shou be the same), *Jogeshra* v *Durga Prasad*, 36 All. 500: 12 A L 844: 24 I.C. 679, see also *Balkrishna Narayan* v. *Jankibai*, Bom 331: 22 Bom L R 289: 51 I.C 340; *Manni Lal* v. *Radh Gopalji*, 23 A L J 344: 47 All 501: 1925 A.I R 602 (All): I.C. 650.

It is provided in s. 8 of the Suits Valuation Act that t valuation for the purposes of jurisdiction and for the purpos of court-fees shall be the same in suits specified in s. 8; t plaintiff, therefore, cannot put one valuation for the purpose court-fees and another valuation which is to be a purely arbitra valuation for the purpose of jurisdiction.

A party is not entitled, when the valuation of the suit c be correctly ascertained to put a purely fancy value on the su for the purpose of jurisdiction, *Dhaturi Singh* v. *Kedar Na Goenka*, I.L.R. 6 Pat. 597: 8 Pat.L T. 475: 101 Ind Cas 50 1927 A.I.R. 224 (Patna).

Acquiescence in valuation.—A suit relating to land was valued by the plaintiff at Rs 872 and instituted in the Munsiff Court The defendant objected to the valuation which on inquiry was found to be at Rs 2,737, whereupon the plaint was returned to be presented to the proper Court The defendant still objected but did not press his case The suit was decreed and the defendant appealed to the District Court *adopting the valuation found by the Munsiff* The appeal was allowed The plaintiff preferred a second appeal to the High Court which decreed the appeal Then there was an application for leave to His Majesty in Council, *held* that the defendant having acquiesced in the valuation ,and having obtained the advantage of an appeal to the District Court, cannot now say that the valuation then was wrong, *Rameshwar Khemka* v *Siddeshwar Ghose*, 101 I C 901

A plaintiff who has valued his suit for the purpose of court-fees is not precluded from putting a higher valuation on his appeal, but if he values his appeal in one way he is not entitled to set up subsequently that his valuation was not the real value, *Hafaz Mahomed Hossein Khan* v *Mansur Ali*, 38 C W.N. 751: 59 C L J 448 1934 A I R 809

Appeal.—The value or subject-matter of the suit determines the forum of appeal The value assigned to the subject-matter of the suit by the plaintiff at the time of the institution of the suit and not the value as found by the Court, would determine the forum, unless it appears that true value has been misstated in the plaint either purposely or through gross negligence, *Mahabir Singh* v. *Behari Lal*, 13 All 320

Where the plaintiff *bona fide* valued the suit at Rs 7,500 but the lower Court found that the valuation is less than Rs. 5,000 and the plaintiff contested that finding and preferred an appeal to the High Court *Held*, that the value of the original suit in Act VII of 1887 did not mean the value as found by the Court and the appeal was rightly preferred to the High Court, *Nilmoney Singh* v *Jagabandhu Ray*, 23 Cal 536

The jurisdiction of the appeal Court is not ousted because large amount is awarded under the decree than the pecuniary jurisdiction of the Court allows it to do, *Madho Das* v *Ramji Patak*, 16 All 286, followed in *Jharia* v. *Gopala*, 3 All L J. 511: 26 All W N 195

Power for Local Government to make rules determining value of land for jurisdictional purposes

3. (1) The Local Government may subject to the control of the Governor General in Council, make rules for determining the value of land for purposes of jurisdiction in the suits mentioned in the Court Fees Act, 18,

section 7, paragraphs (v) and (vi), and paragraph (x), clause (*d*).

(2) The rules may determine the value of any class of land, or of any interest in land in the whole or any part of a local area, and may prescribe different values for different places within the same local area.

NOTES

Amendment.—The words "subject to the control" were substituted for the words "with the previous sanction" by the Devolution Act (XXXVIII of 1920).

"Under section 3 (1), Suits Valuation Act (Act VII of 1887), Local Governments are empowered to make rules for determining the value of land for purposes of jurisdiction in suits mentioned in the Court Fees Act, section 7 (vi) and suits such as that before us are mentioned," *Narayan Nair* v. *Cheria Kathiri Kutty*, 41 Mad 721. 34 M L J. 397: 45 I C 89.

The Punjab Government have made Rules under this section. *See* Punjab Government Notification No. 255 dated the 4th March, 1889

PUNJAB RULES

Manner of determining the value of land for purposes of Jurisdiction in certain classes of suits.

The following rules made by the Local Government, under the power conferred by section 3 of the Suits Valuation Act, 1887, and published as Punjab Government Notification No 255, dated the 4th March 1889, for determining the value of land for purposes of jurisdiction in the suits mentioned in the Court Fees Act, section 7, paragraphs (v) and (vi), and paragraph (x), clause (d), are republished for information and guidance:—

1. In suits for the possession of land the value of the land, for purposes of jurisdiction, shall be held to be as follows:—

(*a*) Where the land forms an entire estate, or a definite share of an estate paying annual revenue to Government or forms part of such an estate, and the annual revenue payable for such part is recorded in the Collector's register, and such revenue is permanently settled,—*sixty times the revenue assessed on the land*

(*b*) Where the land forms an entire estate, or a definite share of an estate paying annual revenue to Government, or

forms part of such estate and is recorded as aforesaid, and such revenue is settled but not permanently,—*thirty times the revenue so payable*

Explanation to clause (b) —Where the land is a fractional share or a portion of part of an estate, and the land revenue payable for such part is recorded in the Collector's register, and such revenue is not permanently settled, the value for purposes of jurisdiction, shall be held to be thirty times such portion of the revenue recorded in respect of that part as may be rateably payable in respect of the share or portion.

Illustration (1) —In a suit for possession of a one-third share of the entire holding of 10 ghumaos forming part of an estate and recorded as paying Rs 20 annual revenue, the value of the land for the purposes of jurisdiction is one-third of thirty times Rs 20, or Rs 600

(2) In a suit for possession of 1 ghumao out of the same holding, the value of the land is one-tenth of thirty times Rs. 20, or Rs 60

(*c*) Where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue, and net profits have arisen from the land during the year next before the date of presenting the plaint,—fifteen times such net profits. But where no such net profits have arisen therefrom,—the market-value.

(*d*) Where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and does not come under clauses (*a*), (*b*) or (*c*) of this rules,—the market-value of the land

(*e*) Where the subject-matter is a garden,—the market-value of the garden

2 In suits to enforce right of pre-emption in land the value of the land, for the purposes of jurisdiction, shall be calculated by the preceding rules.

3 When the land or interest in suit falls partly under one and partly under another of the classes enumerated in rule 1 the value of the land in each class shall be separately calculated.

4 In the application of the above rules the word "land" includes all such right, *e g*, shares in village common and in wells are as accessory to the land in suit and the word 'revenue' as used in the preceding rules when applied to land irrigated from canals, shall be held to include owner's rate for the year next before the date of presentation of plaint, or half the occupier's rate for the same period in cases in which no owner's rate is chargeable.

5. In suits for specific performance of an award so [illegible] the award relates to land, the market-value of the land.

6 Suits relating to a life-interest in land and suits relat[illegible] to an occupancy right shall, for purposes of jurisdiction, [illegible] deemed to be of half the value provided for suits for possess[illegible] under Rule 1.

Punjab Instructions.—*Instructions on the subject of [illegible] Suits Valuation Act, VII of 1887, and the rules made the[illegible] under, for determining the value of certain classes of suits [illegible] the purposes of court-fees and jurisdiction*

The attention of all Civil Courts is drawn to the followi[illegible] instruction on the subject of the provisions of the Suits Val[illegible] tion Act, VII of 1887

2 Part 1 of the Act was extended to this Province [illegible] Government of India, Home Department, Notification No 2[illegible] dated the 20th February 1889, and the Local Government h[illegible] made rules under section 3 of the Act determining the val[illegible] of land and certain interests therein, for the purposes of juri[illegible] diction in suits mentioned in the Court Fees Act, 1870, sec [illegible] paragraphs (v) and (vi) and paragraph (x), clause (*d*), whic[illegible] are republished as above.

3 No restriction under sec 3, sub-section (2), of the Ac[illegible] have been imposed as to the classes of land to which the rule[illegible] apply, or as to the local extent of their operation, and the[illegible] apply therefore to all land generally throughout the province[illegible] whether assessed with land revenue or not

4 Section 4 of the Suits Valuation Act provides that where a suit mentioned in the Court Fees Act, section [illegible] paragraph (iv), or Schedule II, Article 17, relates to land o[illegible] an interest in land, of which the value has been determine[illegible] by the rules made under section 3, the amount at which th[illegible] relief sought in the suit is valued for the purposes of juris[illegible] diction shall not exceed the value of the land or interest a[illegible] determined by those rules The suits falling under section [illegible] paragraph (iv) of the Court Fees Act, are certain suits i[illegible] regard to which the plaintiff is required to state the amount at which he values the relief sought in the plaint. When the value so stated exceeds the value of the land or interest therein as fixed by the rules, the latter and not the former must be regarded as the value for the purposes of jurisdiction. The suits specified in Schedule II, Art. 17, of the Court Fees Act, are those for which it is difficult to fix a correct valuation and a fixed fee of Rs 10 is accordingly levied in these cases. Where any such case relates to land or any interest in land the value for the purposes of jurisdiction, will be the value of the land or interest as fixed by the rules

5 The suits falling under the Court Fees Act, section 7, paragraphs (i) (ii), (iii), (vii), (viii), (ix), (x)(*a*), (*b*), (*c*), and (xi)(*a*) to (*f*) inclusive, are with one or two exceptions, either such as are subject to an *ad valorem* court-fee, in regard to which the value for the purposes of computing the court-fee and the value for the purposes of determining jurisdiction are, under section 8 of the Suits Valuation Act, 1887, the same; or suits dealt with by directions made by the High Court under section 9 of the Act

6 In order to guard against mistakes as to the value of a suit for purposes of jurisdiction and of court-fees, respectively, every plaint ought upon its face to show the value for purposes of jurisdiction as well as the value for the purpose of computing court-fees The former information is requisite in order that the Court may determine whether the plaint should be returned under Order VII Rule 10, of the Code of Civil Procedure When a plaint omits to disclose the value of the suits for the purposes of jurisdiction, the person presenting it should be questioned and his answer recorded on the plaint, unless he consents to amend it then and there

7 As special care is necessary with respect to ... ling
under the provisions of section 7 ... raph (iv) ... le
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Part I, nor are they dealt with by dire
the Act The valuation of such suits, t
to judicial decision, as occasion arises The

suits for houses;

suits for pre-emption in respect of houses,

suits for removal of attachment of houses;

5. In suits for specific performance of an award so far as the award relates to land, the market-value of the land

6. Suits relating to a life-interest in land and suits relating to an occupancy right shall, for purposes of jurisdiction, be deemed to be of half the value provided for suits for possession under Rule 1.

Punjab Instructions.—*Instructions on the subject of the Suits Valuation Act, VII of 1887, and the rules made thereunder, for determining the value of certain classes of suits for the purposes of court-fees and jurisdiction.*

The attention of all Civil Courts is drawn to the following instruction on the subject of the provisions of the Suits Valuation Act, VII of 1887.

2. Part 1 of the Act was extended to this Province by Government of India, Home Department, Notification No 210, dated the 20th February 1889, and the Local Government has made rules under section 3 of the Act determining the value of land and certain interests therein, for the purposes of jurisdiction in suits mentioned in the Court Fees Act, 1870, sec 7, paragraphs (v) and (vi) and paragraph (x), clause (*d*), which are republished as above.

3 No restriction under sec 3, sub-section (2), of the Act have been imposed as to the classes of land to which the rules apply, or as to the local extent of their operation, and they apply therefore to all land generally throughout the province, whether assessed with land revenue or not

4 Section 4 of the Suits Valuation Act provides that where a suit mentioned in the Court Fees Act, section 7 paragraph (iv), or Schedule II, Article 17, relates to land or an interest in land, of which the value has been determined by the rules made under section 3, the amount at which the relief sought in the suit is valued for the purposes of jurisdiction shall not exceed the value of the land or interest as determined by those rules The suits falling under section 7, paragraph (iv) of the Court Fees Act, are certain suits in regard to which the plaintiff is required to state the amount at which he values the relief sought in the plaint. Where the value so stated exceeds the value of the land or interest therein as fixed by the rules, the latter and not the former must be regarded as the value for the purposes of jurisdiction The suits specified in Schedule II, Art. 17, of the Court Fees Act, are those for which it is difficult to fix a correct valuation and a fixed fee of Rs 10 is accordingly levied in these cases Where any such case relates to land or any interest in land the value for the purposes of jurisdiction, will be the value of the land or interest as fixed by the rules.

5 The suits falling under the Court Fees Act, section 7, paragraphs (i), (ii), (iii), (vii), (viii), (ix), (x)(*a*), (*b*), (*c*), and (xi)(*a*) to (*f*) inclusive, are, with one or two exceptions, either such as are subject to an *ad valorem* court-fee, in regard to which the value for the purposes of computing the court-fee and the value for the purposes of determining jurisdiction are, under section 8 of the Suits Valuation Act, 1887, the same, or suits dealt with by directions made by the High Court under section 9 of the Act

6 In order to guard against mistakes as to the value of a suit for purposes of jurisdiction and of court-fees, respectively, every plaint ought upon its face to show the value for purposes of jurisdiction as well as the value for the purpose of computing court-fees The former information is requisite in order that the Court may determine whether the plaint should be returned under Order VII, Rule 10, of the Code of Civil Procedure When a plaint omits to disclose the value of the suits for the purposes of jurisdiction, the person presenting it should be questioned, and his answer recorded on the plaint, unless he consents to amend it then and there

7 As special care is necessary with respect to cases falling under the provisions of section 7, paragraph (iv), and Schedule II, Article 17, of the Court Fees Act, in valuing suits for the purposes of jurisdiction and of court-fees, a schedule showing the value in each class of these cases has been prepared to guide the Courts in fixing the value in particular cases, and the opportunity has been ta[illegible] in a [illegible] prepare an exhaustive schedule following the classif[illegible] property va[illegible] the Court Fees Act It must be clearly un[illegible]400 and filed th[illegible] hat this schedule in itself has no legal forc[illegible]lue of the land de[illegible]ely intended for ready reference by the C[illegible]overnment under[illegible] questions of value An examination of the [illegible]000, it was held [illegible] that it is in only a few cases in which it is [illegible]suit exceeded [illegible]alue the suit for purposes of jurisdiction, either b[illegible] the orde[illegible]value of the subject-matter or by reference to the provis[illegible]held [illegible]ctions 4 and 8 of the Suits Valuation Act, and the rules und[illegible]tion 3, and directions under section 9 of the Act

8 There is no express provision in the Suits Valuation Act, 1887, in regard to the classes of suits mentioned below and they do not admit of being disposed of by rules under Part I, nor are they dealt with by directions under Part II of the Act The valuation of such suits, therefore, must be left to judicial decision, as occasion arises The suits are,—

suits for houses,
suits for pre-emption in respect of houses;
suits for removal of attachment of houses;

suits by or against mortgagors or mortgagees as such;
suits falling under Schedule II, Article 17, clause (iv), which are not provided for the rules under section 3 or directions under section 9 or by section 4 of the Suits Valuation Act;

Suits falling under section 7, sub-section x, clause (*d*), of the Court Fees Act, and relating to property other than land

9 In the cases of some other classes of suits, such as those falling under Articles 14 and 20 of Schedule II of the Court Fees Act, or suits relating to marriage and minority, the law allows no choice of the Court in which proceedings must be taken There is, therefore, no necessity, to fix any valuation for the purposes of determining jurisdiction, while for purposes of court-fees they are sufficiently dealt with by the Court Fees Act, 1870

Valuation of relief in certain suits relating to land not to exceed the value of the land

4. Where a suit mentioned in the Court Fees Act, 1870, section 7, paragraph (iv), or Schedule II, Article 17, relates to land or an interest in land of which the value has been determined by rules under the last foregoing section, the amount at which for purposes of jurisdiction the relief sought in the suit is valued shall not exceed the value of the land or interest as determined by those rules.

s Valua.
N the Court
Under section 4 of the e II, Article 17 Act, the plaintiff is not entitled to put a higher which the value han what is covered by his intertest in the liti section 3, the a *Singh* v *Aiyasami Reddi*, 39 Mad 602 (603). is valued for th
he value of

In valuing a suit for sl *The suit*, the rental of the share is to be the criterion of the ourt. *E am Bilash* v. *Ajoodyalal*, 2 W R Misc 45

Section 4 of the Suits Valuation Act indicates that the principle adopted by the legislature for valuing a suit mentioned in Schedule II, Art 17 of the Court Fees Act which relates to land or an interest in land, is that the value of such a suit for the purpose of jurisdiction shall be governed by the value of land or interest in land When such values are not determined by rules framed under section 3 of the Suits Valuation Act, the values then must be determined by judicial decision, *Dayaram Jagjivandas* v. *Gobordhandas Dayaram*, 31 Bom 73: 8 Bom L.R. 885

Declaration.—In Punjab the proper valuation in a suit for declaration that certain property is the absolute property of the plaintiff and is not liable to partition, is thirty times the annual *jama*, *Sohan Singh* v. *Devi Sing*, 46 Ind Cas 490: 81 P R. 1918: 199 P.L R. 1918: 115 P.W.R 1918

The valuation of a suit for declaration that mortgage in favour of the plaintiff is unaffected by attachment of mortgaged property in execution of decree against mortgagor, when there is no dispute as to the mortgage, is the amount for which execution is sought and not the value of the mortgaged property, *Madakuri Ankamma* v *Mayyala Subbayya*, 54 Ind Cas 543

The valuation of a suit for declaration by an unsuccessful claimant, is the value of the property or the decree whichever is less, *Moolchand Motilal* v *Ramkishen*, 55 All 315 1933 A L J 222: 143 I C 275 1933 A.I R 249 (All) F B

Maximum Limit—Section 4 of the Suits Valuation Act do doubt prescribes only a maximum valuation which can be put on the relief for purposes of jurisdiction in certain classes of suits, *e g*, a suit for declaration of title to land, but that does not mean that the plaintiff was at liberty to put any valuation he likes subject to that maximum on that relief. Ordinarily, when a question of title to landed property is in dispute, the value of the property would be the determining factor as regards the pecuniary jurisdiction of the Court Subject to the maximum value calculated with regard to ss 3 and 4 of the Suits Valuation Act, the market value should determine the jurisdiction in a suit for determination of title . . when the plaintiff, in a suit for declaration of title to certain zemindary property valued the relief for purposes of jurisdiction at Rs 400 and filed the plaint in the Court of the munsiff, and the value of the land determined according to rules made by the Local Government under s 3 of the Suits Valuation Act was about Rs 8,000, it was held that the proper value of the subject-matter of the suit exceeded the pecuniary jurisdiction of the munsiff's Court and the order of the munsiff returning the plaint was on revision upheld by the High Court, *Jagdish Saran* v *Jai Dei*, (1933) 56 All 198 145 I C 942 1933 A I R 903 (All)

Foreclosure.—The valuation for the purposes of jurisdiction is the value of the mortgagor's interest in the property which will be lost to him in case the mortgagee is successful, *Girdhari Lal* v *Sheo Nanden*, 11 O C 154 But if the value of the mortgaged property be greater than or equal to the amount of the charge, then the value of the suit is the total sum due under the deed, *i e*, both principal and interest due under the mortgage, *Kothiram* v *Ganpati*, 8 N L R 179: 17 Ind Cas 886, *Nana* v *Mulchand*, 9 N L R 161

The valuation for jurisdiction of a suit for possession after a decree for foreclosure of a condition sale is not to be calculated according to the scale laid down in section 7, paragraph 9 of the Court Fees Act, *Ahalya Bai Debya* v. *Shama Churan Bose*, 1 C L R 473; *Jeebraj Singh* v. *Inderjeet Mahton*, 18 W R 109; *Nouhoon Singh* v *Toofanee Singh*, 20 W R 33: 12 B L R 113; *Chunder Nath Bhattacharjee* v. *Brindabun Shaha*, 25 W.R 39

Where the purchaser of mortgaged property being defendant in the mortgagee's suit for foreclosure, preferred an appeal against the decree for foreclosure made in the suit, the amount found due on the mortgage being over a lakh of rupees, *held* (for the purposes of ascertaining the court-fee payable on the memorandum of appeal) the value of the property affected by the decree must be taken to be Rs 2,500 being the amount for which the appellant has purchased the property, *Jagatdhar Narain Persad* v *Brown*, 33 Cal 1133: 10 C W N 1010: 4 C.L.J. 121.

Landlord and tenant.—*Suit by tenant*—The value of a suit brought by an occupancy raiyat of certain lands for a declaration that the landlords are not entitled to recover from them by way of rent more than 1|16th share of the produce, is, for the purposes of jurisdiction 15 times the land revenues under rules framed under section 3 of the Suits Valuation Act *Jamal* v *Quadir Baksh*, 54 P R 1914. 238 P L R 1914: 153 P.W.R 1914: 25 Ind Cas 437.

Suits to establish validity of charge upon property is to be valued upon the value of the property or amount of the charge whichever is less *Krishnama Chariar* v *Srinivasa Ayyangar*, 4 Mad 339

Occupancy raiyat—The value of the suit is the value of the subject-matter in controversy, *i e*, the interests claimed by the plaintiff, *Upendra Chandra Mitra* v. *Satcouric Dhar*, 13 Ind Cas 964.

Of a tenant at fixed rates—The valuation of a suit, for the purposes of jurisdiction to eject a tenant at fixed rates, is the value of the right of the tenant in the land which it is sought to destroy but not the value of the land itself nor of merely one year's rent, *Ram Raj Tewary* v *Girnandan Bhagat*, 15 All. 63: 12 All W.N. 240. But see section 7, paragraph (xi), clause (cc) of the Court Fees Act and the cases cited there.

Mortgage.—The valuation of a suit for the purposes of jurisdiction, to declare that the mortgage is subsisting, after disallowance if his claim to mortgaged property which was attached in execution of another decree, need not be on the amount of attachment, *Fisher* v. *Arunachella Cheetiar*, 19 M.L.J. 236: 20 Ind Cas. 522.

Where the suit is to declare that a mortgage by co-parceners is null and void on the ground that the same was executed without consideration and *ultra vires* as the mortgagor had no right to mortgage the plaintiff's share, the valuation for purpose of jurisdiction will be on the basis of mortgagee's rights and not on the value of the property itself, *Paire Lal* v *Ram Chand and Jagannath*, 112 P W R 1911: 11 Ind Cas 443

Redemption.—In a redemption suit the value of the subject-matter is not the market value of the property but the amount of mortgage-money, which amount, therefore, determines the jurisdiction of the trial Court and determines the forum of appeal Section 8 of the Suits Valuation Act does not affect the law laid in 5 All 332 and 8 All 438, *Kedar Singh* v. *Mahatabadal Singh*, 31 All 44 5 All L J 713 (1903) 23 All W N 296 1 Ind Cas 703, *Mohan Lal* v *Mohan Lal and others*, 1926 A I R 346 (Oudh) · 94 I C 784 3 O W N 467. See also the case of *Sarada Sundari* v *Akramunnissa*, 51 Cal. 737: 28 C W N 710 78 I C 747 1924 A I R 783 (Cal)

In a suit for redemption of a mortgage instituted in the Subordinate Judge's Court, the amount of the principal of the debt was Rs 3,899 and odd The plaintiff paid the court-fees on that amount but the Subordinate Judge erroneously ordered the plaintiff to pay court-fees on the total amount payable on redemption, *viz*, Rs 7,218 odd, and the plaintiff paid the deficit court-fee The Subordinate Judge passed a decree in the suit in favour of the plaintiff The defendants preferred an appeal to the High Court The respondent objected that the appeal did not lie to the High Court but to the District Court *Held*, that the amount of the principal debt must be taken as determining the jurisdiction under Civil Courts Act, and consequently that the suit lay in the Subordinate Judge's Court and that the appeal lay to the District Court and not to the High Court The authority of the Full Bench Decision in *Zamorin of Calicut* v *Narayan*, 5 Mad 284, is unaffected by the Suits Valuation Act The order of the Subordinate Judge erroneously levying court-fees on the total amount payable on redemption cannot deprive the District Court of jurisdiction to hear the appeal and confer it on the High Court, *Jallaldeen Marakayan* v *Vijayaswami*, 39 Mad 447 29 M L J. 142 · 1915 M W N 239 · 28 Ind Cas 624, *Basudeva* v *Madhava*, 16 Mad 326 followed See also *Gopal Menon* v *Raman Menon*, 1932 M W N 53 35 L W 64 · 138 I C 136 1932 A I R 217 (Mad) (redemption of *kanom* plus damages), *Pathana* v *Satyanandacharyulu*, 60 M L J 698 33 L W 785 · 132 I C 317: 1931 A I R 479 (Mad) (redemption with profits)

The valuation of a suit for redemption of a usufructuary mortgage plus the profits is the principal amount expressed to be

secured by the instrument of mortgage, *Long Singh* v. *Bishun Lal*, 149 I C. 560: 1933 A I R 625 (Patna).

Redemption and claim of rent.—When there are two distinct causes of action, namely, the claim for redemption and that for the arrears of rent, the value of the subject-matter of suit is the aggregate value of the two heads of relief, *Konna Panikar* v. *Karunakara*, 16 Mad. 328

Redemption and possession.—In a suit for redemption and possession, the amount of mortgage-money is not the basis of valuation for the purposes of jurisdiction. The value of the land in question should be the value, *Ma Hla Saing and another* v. *Ma Su We and others*, 105 I C 412: 1927 A.I.R 304 (Rangoon): 5 Rangoon 499

Improvements—The value of improvements is not to be considered in calculating the value of the "subject of suit" in a suit to redeem a Kanam and a purankandam (further advance) when the instrument of mortgage does not expressly secure the amount to be allowed for improvements in redemption, *Zamorin of Calicut* v *Suryonarayan Bhatta*, 5 Mad 284.

Partition.—*Allahabad High Court*—In suit for partition of the share of one only out of several co-sharers in immovable property, the proper valuation of the suit for the purpose of jurisdiction is the value of the share sought to be separated from the rest of the property, and not the value of the entire property out of which the share is to be taken, *Wajib-ud-din* v. *Waliullah*, 24 All 381

Bombay High Court—A suit for partition and separate possession of joint family property consisting of land, houses and moveable property, falls within section 7, paragraph v of the Court Fees Act and therefore section 3 of the Suits Valuation Act is not applicable The market valuation determines the jurisdiction of the trial Court, *Dagdu Sakharam* v *Totaram Narayan*, 33 Bom. 658· 11 Bom L.R 1074. *See* also *John Joseph De Silva* v *J J De Silva*, 6 Bom L R. 403

Calcutta High Court—The valuation of suit for partition by a joint owner, is the value of the entire property sought to be partitioned and not on the value of the share of the plaintiff Therefore, if the value of plaintiff's share is below Rs 5,000 and the value of the entire property above Rs. 5,000, an appeal lies to the High Court direct from the decree of the Subordinate Judge, *Biraj Mohini Dasi* v *Chintamoni Dasi*, 3 C L J. 197· 10 C.W.N. 565.

But if the suit had been erroneously valued in the court of first instance on the valuation of the share of the plaintiff, then section 11 of the Suits Valuation Act is applicable and the

appellate Court would not interfere unless such valuation has materially prejudiced the disposal of the suit, *Edward Dalglish* v. *Ramdhari Sahu*, 4 C L J. 509.

In a suit for partition it is the value of the entire property which determines jurisdiction and not of the share which the plaintiff claims in the property, *Rajani Kanta Bag* v *Rajabala Dasi*, 29 C W N 76· 52 Cal 128 85 I C 898· 1925 A.I R 320 (Cal) See also *Lala Bhugwat Sahay* v. *Pashupati Nath Bose and others*, 10 C W N 564, and *Baidya Nath Adya* v. *Makhan Lal Adya*, 17 Cal 680; *Onooroop Chandra Mukherjee* v *Pertab Chander Pal*, 6 W R Misc. R 40; *Musst Ameena Khatoon* v *Radhabenod Misser*, 7 M I A 162

Madras High Court—The Madras High Court took the view that the value for the purpose of jurisdiction is the amount at which the plaintiff valued his share See *Velu Gounden* v. *Kumaravelu*, 20 Mad 289; *Baganandan Rangia* v *Baganandan Subramania Chetty*, 9 M L T 3 21 M L J 21 8 Ind Cas 512 (1910) M.W N 755 F B , *Gill* v *Varadaragharayya*, 43 Mad. 396: 38 M L J 92 1920 M W.N 124 27 M L T 146: 55 I C 517

The value of the property in which plaintiff claims share and not the value of the plaintiff's share determines jurisdiction, *Vydinatha* v *Subramanya*, 8 Mad 235, but section 3 of the Suits Valuation Act has altered that law, *Velu Gounden* v *Kumara Velu*, 29 Mad 289 *See* also *Krishna Sami* v *Kanakasabai*, 14 Mad 183 1 M L J 234, *Chakrapani Asari* v *Narasinga, Rau*, 10 Mad 56

Oudh—The valuation for jurisdiction is to be determined according to the plaintiff's share, *Harbhandah* v *Ladli Saran*, 10 O W N 1196· 146 I.C 582 1933 A I R 547 (Oudh)

Patna High Court—The Patna High Court *held* that the value of the suit was that of the share claimed by the plaintiff where the suit is one for declarations with consequential relief, *Dukhi Singh* v *Harihar Shah*, 1921 Pat C W N 89 (92): 1 Pat L T 595 5 Pat L J 540 58 Ind Cas 236, but the value is to be the value of the entire property where the plaintiff is in possession and there is no dispute as to title, *Ranjit* v *Md Quassim* 72 I C 916 1923 A I R 342 (P) I L R 2 Pat 432. 4 Pat L T 257

As to valuation in other provinces see pages 83 and 84, *supra*, under s 7 (iv) (b)

Re-partition—The correct method of regarding the re claimed in suits for partition of a joint family which has al been divided is, that it is merely a prayer to change the enjoyment and can only be valued by deducting from t

of plaintiff's share as ascertained in the partition the value of the beneficial enjoyment as a co-parcener before partition In such a case, therefore, it is impossible to estimate the money-value of the suit to which Art 17B alone should be held to be applicable, *Prathipati Suryanarayana* v *Prathipati Seshayya and others,* 1926 A I.R 122 (Mad).

Pre-emption.—In the Punjab the value of the pre-emption suit for the purpose of jurisdiction is 30 times the proportionate amount of revenue recorded as payable for the holding in which the land in suit is comprised even though it be a specified plot by metes and bounds and not a definite share of the holding, *Sheikh Arshad Ali* v. *Zorawar Singh,* 92 I C 986: 8 L L J. 60: 27 Punj L R 172: 1926 A I R 346 (Lahore)

Possession.—The valuation for the purposes of jurisdiction of a suit for recovery of possession of land, not separately assessed with revenue and not a definite part or share of a revenue paying estate, must be made according to the market-value of the land, *Gadavarty Sundoramman* v. *Godavarty Mangamma,* 34 M L J 558.

Possession of a house.—The value of a suit for possession of a house is the market value of the house as ascertained by the Court and not the value as stated by the plaintiff in the plaint, *Sundar Das* v *Musst Umda Jan,* 82 I C 614: I.L R. 5 Lah 481: 6 L L J 355 F B

The valuation of a suit for possession of a house by ejecting the defendant is to be determined not upon the allegations as made in the written statement but upon allegations made in plaint, *Musst Barkatunnissa* v *Musst Kaniz Fatima,* I.L R. 5 Pat. 631 98 I C 817: 1927 A I R 140 (Patna)

Possession and mesne profits—For valuation of suit for possession and mesne profits claimed depends on the value of the property sought to be recovered plus the amount of profits recoverable, *Mohini Mohan Das* v *Satis Chandra Ray,* 17 Cal 704.

Reversionary right—The valuation of such contingent interest, not being one for possession or for present interests, is the valuation made in the plaint, *Haidarkhan* v. *Ali Akbar,* 18 P R 1897. If the widow is sued to set aside her alienations then the valuation is to be the market-value, *Dhanabaggiammal* v. *Mari Ammal,* 1932 M.W N. 780: 36 L.W. 483: 139 I.C 471: 1932 A.I.R. 671 (Mad).

If the reversioners sue to set aside a decree to which they are parties with the widow, the valuation is to be made at ten times the revenue payable. The High Court said: "when there is in the Act itself a special rule as to valuing the property in

dispute as to court-fees, it is proper to take that method of valuation in preference to any other method to get the value when there is no indication that any other method should be adopted." *D Venkata Narasimha Raju* v *D Chandrayya and others*, 53 M.L J 267: 26 L W 159 · 30 M L T 193: 105 Ind. Cas. 171: 1927 A I R 825 (Madras)

Making and enforcement of rules.

5. (1) The Local Government shall before making rules under section 3, consult the High Court with respect thereto

(2) A rule under that section shall not take effect till the expiration of one month after the rule has been published in the local official Gazette.

Repeal of section 14 of the Madras Civil Courts Act, 1873

6. On and from the date on which rules under section 3 take effect in any part of the territories under the administration of the Governor of Fort Saint George in Council to which the Madras Civil Courts Act, 1873, extends, section 14 of that Act shall be repealed as regards that part of those territories

NOTES

Section 14 of the Madras Civil Courts Act (Act III of 1873) is as follows·—

"When the subject matter of any suit or proceeding is land, a house or garden, its value shall, for the purposes of the jurisdiction conferred by this Act, be fixed in manner provided by the Court Fees Act, 1870, section 7, clause 5"

In suits falling under section 7, paragraph (xi) of the Court Fees Act, the valuation for the purpose of jurisdiction and court-fees is the same There is nothing to indicate that section 8 of the Suits Valuation Act should be read subject to the provisions of section 14 of the Madras Civil Courts Act, *Vannavalli Seshagiri Row* v *Narayanswami Naidu*, 26 M L J 573 24 Ind. Cas 374

For valuation of suits to enforce registration of documents, see *Ramakrishnanamma* v *Bhagamma*, 13 Mad 56 where the Madras High Court *held* at page 59 "The object of the suit is to secure legal efficacy to the transaction evidenced by documents and simply a mode of proving them, and the value of th transaction must therefore be taken to be the value of the suit."

Pre-emption—A suit to enforce a right of pre-emption is suit whose subject-matter includes such rights relating to l

as a right to pre-empt within the meaning of section 6 of the Suits Valuation Act and its proper valuation for the purpose of jurisdiction is, in accordance with section 14 of the Madras Civil Courts Act, that fixed in the manner provided by the Court Fees Act, section 7, paragraph (iv), *Narayanan Nair* v. *Cheria Kathiri Kutty*, 41 Mad. 721 · 34 M L J 397. 45 I C 89.

PART II.

OTHER SUITS.

Extent and commencement of Part II

7. This Part extends to the whole of British India, and shall come into force on the first day of July, 1887.

Court-fee value and jurisdictional value to be the same in certain suits.

8. Where in suits other than those referred to in the Court Fees Act, 1870, section 7, paragraphs (v), (vi) and (ix), and paragraph (x), clause (*d*), court-fees are payable *ad valorem* under the Court Fees Act, 1870, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same.

NOTES

Application.—The provisions of sections 8 of the Court Fees Act (Act VII of 1870) shall apply to appellate Courts as well as to the Courts of lower denominations, and the value of the subject-matter of suits for the purposes of jurisdiction must be determined by the provisions of that section. Thus where the plaintiff valued the suit for the purposes of court-fees at a figure below Rs. 1,000, but valued it for the purposes of jurisdiction at Rs 14,000, *held* that the appeal lay to the District Court and not to the High Court, *Bai Barunda Lakshmi* v. *Bai Manegavri*, 18 Bom. 207.

Suits for redemption are not covered by section 8 of the Suits Valuation Act. The valuation in such suits depends not on the amount secured but on the amount ultimately found to be due, *Sarada Sundari* v. *Akramunnessa*, 51 Cal 737: 28 C W.N. 710: 78 I.C. 747: 1924 A.I.R. 783 (Cal).

When section 8 of the Suits Valuation Act comes into conflict with section 14 of the Madras Civil Courts Act (III of

1873), the former section shall prevail, *The Official Assignee of Ramnad* v *Arunachellam Chettiar*, (1933) 57 Mad 186

Construction.—The right construction of section 8 of the Suits Valuation Act is that the valuation for the purpose of jurisdiction should, in the cases mentioned here, follow and be the same as the valuation for the purpose of court-fees, *Sailendra Nath Mitra* v *Ram Chandra Pal*, 34 C L J 94: 25 C W N 768: 66 Ind Cas 268

Jurisdiction is determined by the valuation made by the plaintiff in a suit for declaration with consequential relief, *The Official Trustee of Bengal* v *Gobardhan Guchait*, 33 C W N. 231: 118 I C 357

The words "as determinable" in this section means as determinable by the Court which has to try the case, *Dayaram Jagjivan* v *Gobordhandas Dayaram*, 31 Bom 73. 8 Bom L R 885

The valuation for court-fees determines the valuation for jurisdiction, *Maung Myi Maung* v *The Mandalay Municipal Committee*, 12 Rangoon 335 1934 A I R 268

Separate valuations.—The plaintiff is not entitled to put an arbitrary value for the purpose of jurisdiction and another value for the purpose of court-fees, *Raj Krishna Dey* v *Bepin Behary Dey*, 40 Cal 245, see also other cases under sec 7 at pages 63 and 88, *supra* *Basanta Kumari* v *Nalini Nath*, 57 C L J 465, *Maung Po Nyun* v *Daw Ngwe Bwint*, 1933 A I R. 410 (Ran), a case of separate valuation in appeal

Valuation of suits.—*Account suits*—Such suits fall under section 7 (iv) (f) of the Court Fees Act and the valuation for jurisdiction and court-fees are to be identical Under Order 7, Rule 2, C P C an approximate value of the amount claimed is to be given and court-fees to be paid on that value This valuation determines the forum of appeal, *Ijjatulla Bhuiya* v. *Chandramohan*, 34 Cal 954 F B 11 C W N 1133 6 C L J 225, *Ishwarappa Manri* v *Dhanji*, 56 Bom 23. 34 Bom L R 55· 137 I C 702 1932 A I R 111 (Bom), and the amount then finally investigated and additional coure-fees to be given under section 11 of the Court Fees Act *See* cases noted under that section, *Bai Varunda Lakshmi* v *Bai Manegavri*, 16 Bom 207; *Bai Amba* v *Pranjivandas*, 19 Bom 198, *Bhagvantrai* v *Mehta Bajirao*, 18 Bom 40, *Raja Babu* v *Gauri Lal*, 9 P L T 726· 109 I C. 895 1928 A I R 535 (Pat)

Administration suits are suits for accounts and consequently the plaintiff need only make an approximate valuation, *Sashibhusan Bose* v *Manindra Chandra Nandy*, 44 Cal. 390: 21 C W N 310 24 C L J 448; *Khatija* v. *Sheikh Adam*, 39 Bom. 545: 17 Bom L R 574· 29 I.C. 949; *Ma Thin On* v *Ma Ngwe*

as a right to pre-empt within the meaning of section 6 of the Suits Valuation Act and its proper valuation for the purpose of jurisdiction is, in accordance with section 14 of the Madras Civil Courts Act, that fixed in the manner provided by the Court Fees Act, section 7, paragraph (iv), *Narayanan Nair* v. *Cheria Kathiri Kutty*, 41 Mad 721. 34 M L J 397. 45 I C 89.

PART II.

OTHER SUITS.

Extent and commencement of Part II

7. This Part extends to the whole of British India, and shall come into force on the first day of July, 1887.

Court-fee value and jurisdictional value to be the same in certain suits

8. Where in suits other than those referred to in the Court Fees Act, 1870, section 7, paragraphs (v), (vi) and (ix), and paragraph (x), clause (*d*), court-fees are payable *ad valorem* under the Court Fees Act, 1870, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same.

NOTES

Application.—The provisions of sections 8 of the Court Fees Act (Act VII of 1870) shall apply to appellate Courts as well as to the Courts of lower denominations, and the value of the subject-matter of suits for the purposes of jurisdiction must be determined by the provisions of that section. Thus where the plaintiff valued the suit for the purposes of court-fees at a figure below Rs 1,000, but valued it for the purposes of jurisdiction at Rs 14,000, *held* that the appeal lay to the District Court and not to the High Court, *Bai Barunda Lakshmi* v. *Bai Manegavri*, 18 Bom. 207.

Suits for redemption are not covered by section 8 of the Suits Valuation Act. The valuation in such suits depends not on the amount secured but on the amount ultimately found to be due, *Sarada Sundari* v. *Akramunnessa*, 51 Cal 737: 28 C.W.N. 710: 78 I C. 747: 1924 A.I.R. 783 (Cal.).

When section 8 of the Suits Valuation Act comes into conflict with section 14 of the Madras Civil Courts Act (III of

1873), the former section shall prevail, *The Official Assignee of Ramnad* v *Arunachellam Chettiar*, (1933) 57 Mad 186

Construction.—The right construction of section 8 of the Suits Valuation Act is that the valuation for the purpose of jurisdiction should, in the cases mentioned here, follow and be the same as the valuation for the purpose of court-fees, *Sailendra Nath Mitra* v. *Ram Chandra Pal*, 34 C L J 94 25 C W N 768: 66 Ind Cas 268

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The words "as determinable" in this section means as determinable by the Court which has to try the case, *Dayaram Jagjivan* v *Gobordhandas Dayaram*, 31 Bom 73 8 Bom L R 885.

The valuation for court-fees determines the valuation for jurisdiction, *Maung Myi Maung* v *The Mandalay Municipal Committee*, 12 Rangoon 335 1934 A I R 268

Separate valuations.—The plaintiff is not entitled to put an arbitrary value for the purpose of jurisdiction and another value for the purpose of court-fees, *Raj Krishna Dey* v *Bepin Behary Dey*, 40 Cal 245, see also other cases under sec 7 at pages 63 and 88, *supra* *Basanta Kumari* v *Nalini Nath*, 57 C L J 465, *Maung Po Nyun* v *Daw Ngwe Bwint*, 1933 A I R. 410 (Ran), a case of separate valuation in appeal

Valuation of suits.—*Account suits*—Such suits fall under section 7 (iv) (f) of the Court Fees Act and the valuation for jurisdiction and court-fees are to be identical Under Order 7, Rule 2, C P C an approximate value of the amount claimed is to be given and court-fees to be paid on that value This valuation determines the forum of appeal, *Ijjatulla Bhuiya* v. *Chandramohan*, 34 Cal 954 F B · 11 C W N 1133. 6 C L J. 225; *Ishwarappa Manri* v *Dhanji*, 56 Bom 23 34 Bom L R 55: 137 I.C 702 1932 A I R 111 (Bom), and the amount then finally investigated and additional coure-fees to be given under section 11 of the Court Fees Act *See* cases noted under that section, *Bai Varunda Lakshmi* v *Bai Manegavri*, 16 Bom 207, *Bai Amba* v *Pranjivandas*, 19 Bom 198; *Bhagvantrai* v *Mehta Bajurao*, 18 Bom 40, *Raja Babu* v *Gauri Lal*, 9 P L T. 726: 109 I C. 895 1928 A I R 535 (Pat)

Administration suits are suits for accounts and consequently the plaintiff need only make an approximate valuation, *Sashibhusan Bose* v *Manindra Chandra Nandy*, 44 Cal. 390: 21 C W.N 310. 24 C L.J. 448; *Khatija* v *Sheikh Adam*, 39 Bom. 545: 17 Bom L R. 574: 29 I C 949; *Ma Thin Oi Ngwe*

Hmon, 12 Rangoon 512, other cases *supra* under sec. 7 (iv) (f) of the Court Fees Act

Adoption—In a suit to set aside an adoption, the valuation by the plaintiff of the relief claimed determines the forum of the Court, *Prohlad Chandra Das* v. *Dwarka Nath Ghose*, 37 Cal 860: 14 C W.N. 929: 6 Ind Cas. 636 The valuation for jurisdiction is (a) according to *Madras High Court*, the value of the property at stake, *Keshava* v. *Lakshmi Narayan*, 6 Mad 192, (b) according to *Allahabad High Court*, according to the valuation put by the plaintiff, *Sheodheni* v. *Tulshi Ram*, 15 All 378 (1893) All.W N. 147. The Bombay High Court has followed the Allahabad High Court, *Bai Machhbai* v. *Bai Hirabai*, 35 Bom 264. 13 Bom L R 251. 10 Ind Cas. 816.

A suit for declaration as to the factum and validity of an adoption which may directly or indirectly affect title to land, is not a suit for land within the meaning of sec. 14 of the Madras Civil Courts Act of 1873 as amended by the Act of 1916 and is governed by sec 12 thereof, by which the value of the subject-matter of the suit determines the forum for purposes of jurisdiction. The subject-matter of the suit being the factum and validity of the adoption, its value is the real market value of the land affected and not the notional value calculated under the Court Fees Act

The general principle deducible for valuation for purposes of jurisdiction where no special method of valuation has been provided by statute are (1) that where the subject-matter of a suit is wholly unrelated to anything which can be readily stated in definite money terms, the plaintiff having to put some money value for the purpose of jurisdiction, must put more or less arbitrary value, and if there are no factors in the case from which the Court can say that the valuation by the plaintiff is wrong or dishonest, the Court will accept the valuation, and (2) that where the subject-matter is so related to things which have a real money value that the relief asked for will affect these, the value of the suit for the purposes of jurisdiction is to be taken as the market value of the property affected. *Vasireddy Veeramma* v *Merupudi Butchiah*, 52 M L.J. 381: 101 I.C. 379: 1927 A.I.R. 563 (Mad.): 50 Mad. 646: 25 L.W 440.

Attachment—A suit for declaration that the property is not liable to attachment and sale in execution of a decree, is to be valued at the amount for which the decree is to be executed when the value of the property exceeds the value of the decree. *Anandi Kunwar* v. *Ram Narayan Das*, 40 All 505: 16 A L J 374: 45 I C 494, but see *Amir Nawab* v. *Musst Wajda Begum*, 103 I.C. 819: 1927 A I.R. 289 (Patna); *Mool Chand Moti Lal* v. *Ram Kishen*, 55 All. 315: 1933 A.L.J. 222: 143 I C. 275: 1933

A I.R. 249 (All); *Dew Dat* v. *Dwa Kwi*, 137 I C. 54: 1932 A.I R. 20 (Ran.).

Award—A suit to set aside an award is to be valued at the actual value of the subject-matter of the suit, *i e*, according to the value of the liability which the plaintiff wishes to get rid of and an arbitrary value should not be given. *Venkata Challam Pillai* v *P U Srinivasa Aiyar*, 75 Ind Cas 115: (1924) A I.R. 84 (Madras): 1923 M W.N 747. 18 L.W 399

Under the Code of 1908, the value depends on the thing awarded rather than on the matter originally in dispute, (in case of an award without the intervention of Court) The Act of 1908 has changed the language used in the Code of 1882. *Mohesh Chandra Koondoo* v *Amar Chandra Koondoo*, 18 C.W.N 867

Bond—Suits based on a bond whether registered or unregistered are suits for money and the valuation for the purposes of jurisdiction and court-fees are the same, as these suits fall under section 7, paragraph 1, *i e*, on the amount in claim

Cancellation of a bond—The valuation of suits for cancellation of a bond which is admitted by the plaintiff to be for a portion of the consideration under a mistaken belief that the bond was for the amount admitted in plaint, is to be valued at the difference in the amount admitted and the amount stated in the bond. *Kali Charan Rai* v *Ajudia Rai*, 2 All 148; *Narain Putter* v *Aya Putter*, 7 Mad H C 372, and the valuation must be with reference to principal amount and not the principal amount plus interests, *Gulab Rai* v *Mangli Lal*, 6 All 71

All cancellation of documents falls under section 7 (iv) (c) of the Court Fees Act, hence the valuation for the purposes of court-fees and for the purpose of jurisdiction are the same The plaintiff in a suit for cancellation of a deed of sale and setting aside a sale and for possession, can put his own valuation. *Param and others* v *Achal*, 4 All 289, *Maung Noe* v *Maung Kha Pu*, 142 I C 705 1933 A I R 40 (Rang)

Conjugal rights—In suits for restitution of conjugal rights the valuation is the valuation of the plaintiff. *Jan Mohammed Mandal* v *Masher Bibee*, 34 Cal 352 5 C L J 400; 11 C W N 458; *Zaer Hussain Khan* v *Khurshed Jan*, 28 All 545· 3 All L J 266· (1906) 26 All W N 99

The valuation in the plaint is to be accepted unless made with an improper motive, or deliberately for the purpose of giving the Court jurisdiction which it otherwise would not have *Jasoda Chhotu* v *Chhotu Mannu*, 11 Bom L R 1352: 4 Ind. C 836 See other cases under sec 7 (iv) (c), *supra*, page 132.

Customary right—A suit for division and re-distribution of village lands according to custom, need only be valued at...

to the share of the plaintiff, *Venkataswami* v. *Subba Rau*, 2 Mad. H C R. 1.

Damages—The valuation of suits for damages claimed, for the purposes of j[illegible], to amount claimed and not the am[illegible] be found due, *Joy Doorga Dossee* [illegible], 1[illegible] W.R. 248

Declaration.—*To set aside decrees.*—The valuation of a suit for the purposes of jurisdiction to set aside a decree, obtained against the interest of the plaintiff, should ordinarily be valued at the amount of the decree, *Umatul Batul* v. *Nauji Koer*, 11 C W N. 105 6 C.L J 427; *Thakur Prosad* v. *Pankhal Singh*, 8 C.L J 485 But where the amount decreed and the value of the property in dispute are not identical, then the lower of the two values is the value of the suit. The Judicial Committee of the Privy Council said: "The value of the action means the value to the plaintiff. But the value of the property might well be Rs. 1,000 while the execution debt Rs. 10,000 It is only when the execution debt is less than the value of the property that its amount affects the value of the suit," *Bibi Phul Kumari* v *Ghanshyam Misser*, 35 Cal. 202: 12 C W.N. 169: 7 C L J. 36 P C

The fee payable on the plaint as well as on the memorandum of appeal is a fixed sum, therefore the value of the subject-matter must be the market value thereof, *Amir Nawab* v. *Musst. Wajda Begum*, 103 I.C 819· 1927 A I.R 289 (Patna).

Suits for simple declaration—The value of a suit for declaration is the value of the property in respect of which the declaration is asked for, *Mohini Mohan Misser* v *Gour Chandra Rai*, 5 Pat.L J. 397: 1 P L T 390: 56 Ind. Cas. 762: 1921 Pat. C.W.N. 105, but see *Ganapati* v *Chattu*, 12 Mad 223 where it was held that the value would be as if the suit was one for possession, *Badam Suryanarayana* v. *Yalla Bullayya*, 101 I.C. 85: 1927 A I R. 568 (Mad): 52 M L J 323: 25 L.W. 367.

Declaration of title to land—The valuation for suits for the purposes of jurisdiction to declare title to four paid offices in a temple, should be the value of all the four offices, *Sundara* v. *Subha*, 10 Mad. 371

With Consequential relief—The value put by the plaintiff is to be taken as the proper value unless it appears that value so put was arbitrary and is inconsistent with the value of the relief sought and circumstances which subsequently influence the judgment of the Court are not to be looked at, *Rajabala Dassi* v. *Radhika Charan Ray*, 40 C L.J. 150; and other cases under sec. 7 (iv) (c), Court Fees Act, *supra*, pages 63 to 66

Doorway—The valuation for the purposes of jurisdiction of a suit to close a doorway is to be calculated upon the selling

price of the house before and after the door was opened, *Mula Mal* v. *Gurdial*, 5 P.R. 1887.

Injunction.—*Declaration and injunction*—The Court must accept the value of the relief as stated in the plaint for the purpose both of court-fees and jurisdiction, *Vaccham Keshalhai Balibhai* v *Vaccham Naubha Bawaji*, 33 Bom 307: 11 Bom L R. 90: 4 Ind Cas. 108; *Hari Sunker Dutt* v *Kali Kumar Patra*, 32 Cal 734: 9 C W N. 690, except where under section 3 of the Suits Valaution Act the valuation is determined by the rules framed under the section, *Barru* v *Lachhman*, 103 P.R. 1913: 23 P.L R. 1913: 228 P.W R 1913 22 Ind Cas 503. But the value must be reasonable value, *Umatul Batul* v *Nanji Koer*, 11 C.W N. 705: 6 C L J 427.

The plaintiff valued his suit for injunction at Rs 110 for the purpose of court-fees and at Rs. 4,000 for the purpose of jurisdiction and paid court-fees on Rs 110 only The suit was dismissed and pleader's fees were assessed on Rs 4,000, held, by the Punjab High Court that the valuation for the purpose of jurisdiction and for court-fees being the same the Court below should have asked the plaintiff to re-state the value and awarded pleader's fees accordingly, *Amir Chand* v *Hakim Ali*, 69 Ind Cas. 577. 1924 A I R (Lahore) 364; *Jhanda Singh* v *Bhagwan Dass*, 33 P.L R. 488. 137 I C. 240; *Ghulam Haidar* v *Bishamber Das*, 33 P L R 458: 140 I C. 73, *Gurudwara Mahant Jwala Singh* v *Kala Singh*, 32 P L R 193 133 I C 120 1931 A I R 307 (Lah)

In a suit for injunction it is unnecessary for the plaintiff to fix any value for purposes of jurisdiction, as under section 8 of the Suits Valuation Act the valuation for the purpose of court-fees and valuation for the purpose of jurisdiction are identical, *Govinda Krishna Sathe* v *Hanmaya Lingaya Fulmali*, 45 Bom 567. 22 Bom L R 1450 63 Ind Cas 777, *Janki Sahay* v. *Lal Behari Lal*, 1926 Pat C W N 102 1926 A I R 334 (Patna) 94 I C 103, *Bachhan* v *The Municipal Board of Mirzapore*, 94 I C 951 24 A L J 478 48 All 412. 1926 A I R. 423 (Allahabad), *Official Receiver of Ramnad* v *Arunachalam Chettiar*, 1933 M W N 998 38 L W 447· 65 M L J 420 1933 A I R 721 (Mad) See also *Maung Myi Maung* v *Mandalay Municipal Committee*, 12 Ran 335: 1934 A I R 268 (Ran.) where the valuation for injunction was not made.

Kobalas—Declaration of title to land on setting aside kobalas—The valuation for the purposes of jurisdiction of suits to declare title of the plaintiff to lands on setting aside certain *kobalas* illegally executed by the father of the plaintiff need not be valued at the total value of the kobalas, *Sheogolam Singh* v. *Bejoyram Protab Singh*, W.R S N 317.

The valuation for the purpose of jurisdiction of a suit

set aside a kobala by which the estate was illegally alienated, need not be according to value stated in the kobala, *Angopura Chowdhury* v. *Meah Bibee*, 10 W.R. 207.

Landlord and tenant.—In a suit to obtain lease on declaration of mourasi and mokarari title to the land at an annual rental of Rs. 71, it was held that the suit falls under section 7 paragraph (x) (c) of the Court Fees Act and under section 8 of the Suits Valuation Act and the suit should be valued at Rs. 71 for the purposes of jurisdiction and court-fees and the suit ought to be filed in Munsiff's Court, *Port Canning and Land Improvement Co Ld* v *Rosonali*, 17 C.W.N. 160: 13 Ind. Cas 46.

Under section 7, paragraph (xi) (cc) of the Court Fees Act a suit by the landlord against a tenant including holding over is to be valued according to the amount of rent payable for the year next before the year of suit The valuation for court-fees will be the value for jurisdiction under section 8 of the Suits Valuation Act, *Ram Chand* v *Ram Sukh Das*, 27 P.R. 1910: 30 P W R. 1910· 5 Ind. Cas. 910.

A suit by a landlord for a declaration that a tenant is not entitled to permanent rights of occupancy, should be valued as one for possession under sec 7 (xi) (cc) of the Court Fees Act at one year's rent and not at the market-value of the land, *Badam Suryanarayana* v. *Yalla Bullayya*, 101 I.C. 85: 1927 A.I.R 563 (Madras)· 52 M.L J. 323· 25 L W 367.

In a suit under either sec 44 or sec 84 of the Agra Tenancy Act, the valuation for court-fees should be the amount of rent payable in the next preceding year and valuation for jurisdiction should follow that valuation, *Raghunath Ram* v. *Sitaj Lal*, 1934 A L J 708: 152 I.C 115: 1934 A I R. 825 (All).

Mortgage.—A suit to recover money advanced on a mortgage with interest is to be valued both for court-fees and for jurisdiction at the amount in claim, *Sailendra Kumar* v. *Hari Charan*, 58 Cal 829: 52 C L J 589: 130 I.C. 876: 1931 A I R 159 (Cal)

Partition.—The plaintiff, in a suit for partition alleging that he is in joint possession with the defendant of the properties which are subject-matter of partition, sues under sec. 7 (iv) (*b*) of the Court Fees Act applicable to such suit. Section 8 of the Suits Valuation Act applies to such suits for partition as are not also suits for possession, *Chelaswamy Ramiah* v *Chalaswamy Ramasamy*, 1912 Mad.W.N. 199: 13 Ind. Cas. 903. But see *Beni Madhab* v. *Gobind Chandra*, 22 C.W.N. 669. See cases under section 4, Suits Valuation Act, *supra*, and also under sec 7 (iv) (*b*) of the Court Fees Act.

Partnership.—In a suit by different partners for specific sums of money on adjustment of accounts or in the alternative

for such other amounts as may be found due on adjustment of accounts after dissolution of partnership, the court-fee is payable *ad valorem* under section 7, para (iv) (f) of the Court Fees Act and the value for the purposes of jurisdiction under section 8 of the Suits Valuation Act is the same as that for the computation of court-fees, *i e*, the amount at which the relief sought is valued, *Dhani Ram Saha* v *Bhagirath Saha*, 22 Cal 692 (708): *Ladubhai* v *Revichand*, 6 Bom. 143; *Mohan Lal* v. *Nihal Chand*, 152 I C 608. 1935 A I.R 40 (Lah). See other cases under sec 7 (iv) (f) of the Court Fees Act, *supra*.

Registration of documents—suits to enforce.—In such suits the valuation would be according to the valuation made by the plaintiff The court-fee payable is Rs 10 only, but if there be a further question whether the plaintiff was a minor when he executed the deed, the court-fees payable are *ad valorem* and the valuation would be the same for court-fees and for jurisdiction

The above was the opinion of the author expressed in previous editions of this book The Calcutta High Court in *Golam Rahaman Mondal* v *Sm Sabekjan Bibi*, 30 C W.N. 951 held that the plaintiff in a suit under section 77 of the Indian Registration Act for the registration of a conveyance, is entitled to put his own valuation on the suit as the suit it not with regard to any land or interest in land to be conveyed by the document

The Madras High Court held that the valuation is to be made at the value of the land expressed in the instrument, *Ramakrishnamma* v *Bhagamma*, 15 Mad 56; *Ramu Aiyar* v. *Sankara Aiyar*, 31 Mad 89

Religious worship.—In a suit to obtain an injunction that the defendants should not restrain the plaintiffs from saying prayers in a certain mosque and setting up their own Imam to lead the prayers of their congregation and from performing other rituals connected with the divine service, *held* that the value for the purposes of court-fees is the value for the purposes of jurisdiction, *Umar Din* v. *Abdulla*, 43 P.L R. 1903.

Rent—Enhancement of.—The plaintiff cannot put one valuation for the purpose of court-fees and another for jurisdiction, *Dhaturi Singh* v *Kedar Nath Goenka*, 8 P.L T. 475

Rent and injunction.—Where the plaintiff brought a suit for recovery of arrears of rent and injunction on [illegible] persons from disputing his title as landlord, the suit [illegible] d upon two causes of action and falls under para. (i) and [illegible]) of section 7 of the Court Fees Act Th[illegible] val[illegible] the purpose of court-fees and valuation for [illegible] same under section 8 of the Suits Va[illegible] *Motumal*, 6 Sind L.R. 115: 17 Ind Cas.

Sale of joint family property.—A suit to prevent sale of joint family property in execution of a decree against a member of the family, is to be valued at the value of the property of which the sale is sought to be stopped or the value of the decree sought to be executed, whichever is smaller, *Munshi Mahton and others* v *Lachman Lal*, 10 P.L.T. 545: 120 I.C 765: 1929 A I R 615 (Patna).

Specific performance.—In suits for specific performance the method of valuation for the purpose of jurisdiction is first to value the suit for the purpose of court-fees under section 7, para (x) (c) of the Court Fees Act and then to adopt that valuation as valuation for the purpose of jurisdiction, *Sailendra Nath Mitra* v *Ram Chand Pal*, 34 C.L.J. 94: 25 C.W.N 768: 66 Ind Cas. 268

Set-off.—There is an important difference between the method of valuation for the purpose of jurisdiction permissible in the case of a claim for a money-decree made in a plaint and the method of valuation for purposes of jurisdiction permissible in the case of a set-off pleaded by a defendant in his written statement

Section 8 of the Suits Valuation Act, 1887, is ordinarily the provision regulating the valuation of a plaint in a suit for the purpose of jurisdiction, and when that provision is read with the provisions of the Court Fees Act, 1870, the valuation of a plaint in which a money decree is claimed is based on the actual sum claimed after allowing for deductions, such as expressed: Set-off in the plaint...... The provisions of the Court Fees Act applies to the case of a set-off, *D. S Abraham & Co* v. *Ebrahim Gorabhay*, 1925 A.I R 65 (Rangoon): 2 Ran 462: 84 I C 971

Tarwad, membership of.—The value of a suit for a declaration that certain persons are or are not members of a tarwad is the value of the share of the tarwad property which would be allotted to them if a partition were made by common consent, *Panga* v. *Unnikutti*, 24 Mad 275.

Determination of value of certain suits by High Court

9. When the subject-matter of suits of any class other than suits mentioned in the Courts Fees Act, 1870, section 7, paragraphs (v) and (vi), and paragraph (x), clause (*d*), is such that in the opinion of the High Court it does not admit of being satisfactorily valued, the High Court may, with the previous sanction of the Local Government, direct that suits of that class shall, for the purposes of the Court Fees Act, 1870, and

of this Act and any other enactment for the time being in force, be treated as if their subject-matter were of such value as the High Court thinks fit to specify in this behalf.

NOTES

Rules have been framed in accordance with this section by the High Court of Madras, the Chief Court (at present a High Court) of Punjab and the Judicial Commissioners of Central Provinces and the Chief Court of Oudh

The Madras High Court Rules are dated 26th February 1903 and are published in the "Fort St George Gazette", dated 3rd March, 1903, Part II, p 368.

For the Punjab Chief Court Rules, *see* Rules and Orders under the Special Act, Vol III, p 90, No 14 According to these Rules suits for restitution of conjugal rights are to be valued at Rs. 1,000, *Nathu* v *Chuhri*, 20 P L R 1919· 52 I C. 101.

For the Oudh Rules, *see* Notification No 779, dated the 18th June 1889, by the Judicial Commissioner of Oudh and Notification No 2464, dated the 21st December 1896, N W P and Oudh Gazette, dated the 4th January 1899, Part II, p 2, etc

For the Central Provinces Rules, *see* Notification No 3240, dated 28th June, 1888, C P. Gazette, Pt II, p. 140

Scope.—The value prescribed in the rules have been prescribed not only for the purpose of jurisdiction but also for court-fees, *Amdu and others* v *Pessi*, 1929 A.I.R 20 (Nag.)

LAHORE HIGH COURT RULES

Manner of determining the value of suits for purposes of Jurisdiction.

Rules made by the High Court, with the previous sanction of the Local Government, under the powers conferred by section 9 of the Suits Valuation Act, VII of 1887, and all other powers in that behalf, for determining the value of the subject-matter of certain classes of suits, for the purposes of jurisdiction, which do not admit of being satisfactorily valued, and for the treatment of such classes of suits, as if their subject-matter were of the value as hereinafter stated.

RULES

1. (*i*) Suits in which the plaintiff in the plaint asks for a decree against the other party to the alleged marriage, either alone, or with other defendants, for restitution of conjugal rights;

(*ii*) Similar suits for a decree establishing, or annulling or dissolving a marriage;

(*iii*) Suits in which the plaintiff in the plaint asks for a decree establishing a right to the custody or guardianship of a minor, including guardianship for the purposes of marriage;

(*iv*) Suits in which the plaintiff in the plaint asks for a decree establishing or annulling an adoption, including under the expression "adoption" the customary appointment of an heir;

(*a*) For the purposes of the Court Fees Act, 1870, suits of classes (*i*) with the exception noted below (*ii*), (*iii*) and (*iv*), Rs 200

(*b*) For the purposes of the Suits Valuation Act, 1887, and the Punjab Courts Act, 1918, as amended, suits of classes (*i*), and (*ii*)—Rs 1,000; suits of clausses (*iii*) and (*iv*)—such sum exceeding Rs 500 and not exceeding Rs 1,000 as the plaintiff shall state in the plaint.

Explanation 1—Classes (*i*) and (*ii*) do not include petitions under any special Act relating to the dissolution of marriage

Explanation 2—Class (*iii*) does not include proceedings under Act IX of 1861 (repealed by Act VIII of 1890) or Act XIII of 1874

2. Suits by a plaintiff, during the life-time of a person alleged to have a restricted power of alienation in respect of immovable property, in which the plaintiff in the plaint seeks to have an alienation of immovable property made by such person declared to be void except for the life of such person or for some other determinate period.

Value—(*a*) For the purposes of the Court Fees Act, 1870, as determined by that Act

(*b*) For the purposes of the Suits Valuation Act, 1887, and the Punjab Courts Act, 1918 (as amended).

(*i*) when the alienation is by a written instrument which declares the value of the interest purporting to be created, or the amount of the consideration for which the alienation is made—such value or amount

(*ii*) in other cases—the market-value, at the date of institution of the suit, of the property alienated; subject in either case to the provisions of Part I of the Suits Valuation Act, 1887, and of the rules in force under the said part, so far as those provisions are applicable

3. Suits in which the plaintiff in the plaint asks for accounts only, not being suits to recover the amount which may be found due to the plaintiff on taking unsettled accounts between him and the defendant, or suits of either of the kinds described in Order XX, Rule 13 of the Code of Civil Procedure.

Value.—(*a*) For the purposes of the Court Fees Act, 1870,—as determined by that Act.

(*b*) For the purposes of the Suits Valuation Act, 1887, and the Punjab Courts Act, 1918 (as amended),—such amount exceeding Rs. 100 and not exceeding Rs. 500, as the plaintiff may state in the plaint.

4. Suits in which the plaintiff in the plaint seeks to establish or to negative any right hereinatfer mentioned, with or without an injunction, and with or without damages, namely,—a right of way; a right to open or maintain or close a door or a window, or a drain or a water-shoot (*parnala*); a right to or in a water course or to the use of water; a right to build, or raise or alter or demolish a wall, or to use an alleged party-wall or joint staircase,—

Value—(*a*) For the purposes of the Court Fees Act, 1870, as determined by that Act

(*b*) For the purposes of the Suits Valuation Act, 1887, and the Punjab Courts Act, 1918 (as amended),—

(*i*) if damages are not claimed, such amount exceeding Rs. 100, and not exceeding Rs 500, as the plaintiff may state in the plaint —

See *Munshi Ram* v *Ram Saran*, 1934 A I R 796 (Lah) for valuation of a suit to demolish a wall

(*ii*) if damages are claimed,—the amount of such damage increased by Rs 100

5. Suits in which the plaintiff in the plaint seeks to set aside an award, and applications registered as suits under the provisions of Schedule II, paragraphs 17 and 18, of the Code of Civil Procedure (to file an agreement to refer to arbitration), or of Schedule II, paragraph 19, of the said Code (to file an award), when or so far as the award or the agreement relates to property,—

Value—(*a*) For the purposes of the Court Fees Act, 1870 as determined by that Act.

(*b*) For the purposes of the Suits Valuation Act, 1887 and the Punjab Courts Act, 1918 (as amended),—

the market value of the property in dispute, subject to the provisions of Part I of the Suits Valuation Act, 1887, and of the rules in force under the said Part, so far as those provisions are applicable

6. The foregoing rules are subject to the following explanations,—

(*i*) the term "plaint" includes an amended as well as original plaint;

(*ii*) a suit falling within any of the above descriptions is not excluded therefrom merely by reason of the plaint seeking other relief in addition to that described in any of the foregoing rules.

Schedule showing the value of suits for purposes of computing court-fees and of determining the jurisdiction of the Courts, respectively

1	2	3	4	5
Value of suits for the purpose of computing court-fees under the Court Fees Act, 1870			Value for the purpose of determining the jurisdiction of the Court, under the Suits Valuation Act, 1887, and the Rules and Directions made thereunder.	
Court Fees Act	Nature of suit	Value for court-fee *purposes*	Suits Valuation Act *and Rules*	Value for purposes of *Jurisdiction*
Sec. 7, paragraph i. .	In suits for money.	*Ad valorem*, according to the amount claimed.	Section 8	The same as in column 3
Sec. 7, paragraph ii .	In suits for maintenance and annuities or other sums payable periodically.	*Ad valorem*, on ten times the amount claimed to be payable for one year.	Do.	Ditto
Sec. 7, paragraph iii .	In suits for movable property other than money where the subject matter has a value	According to such value at the date of presenting the plaint	Do.	Ditto.

Sec. 7, paragraph iv	In suits— (*a*) for movable property where the subject matter has no market value	*Ad valorem*, according to the amount at which the relief sought is valued in the plaint or Memorandum of appeal, such value must be stated	Ditto. (*a*)	(*a*) the value of the relief sought as stated in the plaint
	(*b*) to enforce the right to share in any property on the ground that it is joint family property	Do	(*b*) As regard, land section 4 and rules under section 3 In other cases the same as in (*a*)	(*b*) The value of the relief sought as stated in the plaint, but not exceeding the value of the land under the rules The same as in (*a*)
	(*c*) to obtain a declaratory decree or order where consequential relief is prayed,	*Ad valorem*, accordingg to the amount at which the relief sought is valued in the plaint or Memorandum of appeal, such value must be stated	(*c*) The same as in (*b*), subject to rule 2, Chapter X of this volume and section 9 of the Suits Valuation Act	(*c*) The same as in (*b*) subject to rule 2, Chapter X of this volume and section 9 of the Suits Valuation Act
	(*d*) to obtain an injunction,	Do	(*d*) Ditto, subject to rule 4 Chapter X of this volume and section 9 of the Suits Valuation Act	(*d*) The same as in (*a*), subject to rule (4), Chapter X of this volume and section 9.
	(*e*) for a right to some benefit (not herein otherwise provided for) to arise out of land, and	Do	(*e*) the same as in (*a*)	(*e*) the same as in (*a*).

Schedule showing the value of suits for purposes of computing court-fees and of determining the jurisdiction of the Courts, respectively

1	2	3	4	5
Value of suits for the purpose of computing court-fees under the Court Fees Act, 1870.			Value for the purpose of determining the jurisdiction of the Court, under the Suits Valuation Act, 1887, and the Rules and Directions made thereunder.	
Court Fees Act.	Nature of suit.	Value for court-fee purposes	Suits Valuation Act and Rules.	Value for purposes of Jurisdiction
	(*f*) for account.	Do	(*f*) the same as in (*a*), subject to rule 3, Chapter X of this volume and section 9	(*f*) the same as in (*a*), subject to rule 3, Chapter X of this volume and section 9.
Section 7, paragraph v	In suits for the possession of land, houses and gardens—according to the value of the subject-matter, and such value shall be deemed to be— Where the subject matter is land, and (*a*) where the land forms an entire estate or a definite share of an estate paying annual revenue to Government, or forms part of such an estate and is recorded in	*Ad valorem*, on ten times the revenue payable.	(*a*) section 3, Suits Valuation Act and rule 1, clauses (*a*) and (*b*) and rules 3 and 6 of Chapter XI of this volume.	(*a*) If the revenue is permanently settled—sixty times the revenue assessed on such land

the Collector's register as separately assessed with such revenue; and such revenue is permanently settled			
(b) Where the land forms an entire estate, or a definite share of an estate paying annual revenue to Government or forms part of such estate and is recorded as aforesaid and such revenue is settled but not permanently.	*Ad valorem* on ten times the revenue payable	(*b*) Do	(*b*) if the revenue is not permanently settled thirty times the revenue assessed on such land.
(*c*) Where the land pays no such revenue or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue, and net profits have arisen from the land during the year of presenting the plaint,	*Ad valorem*, on fifteen times the net profits	(*c*) Rule 1, (*c*) and rules 3 and 6 of Chapter XI of this volume	(*c*) Fifteen times the net profits.
but where no such net profits have arisen therefrom	*Ad valorem*, on value fixed by Court with reference to value of similar land in the neighbourhood.	Rule 1, clause (*d*) and rules 3 and 6 of Chapter XI of this volume	The market value

Schedule showing the value of suits for purposes of computing court-fees and of determining the jurisdiction of the Courts, respectively

1	2	3	4	5
Value of suits for the purpose of computing court-fees under the Court Fees Act, 1870			Value for the purpose of determining the jurisdiction of the Court, under the Suits Valuation Act, 1887, and the Rules and Directions made thereunder	
Court Fees Act	Nature of suit.	Value for court-fee purposes	Suits Valuation Act and Rules	Value for purposes of Jurisdiction.
	(*d*) Where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above mentioned	Market value of the land	(*d*) Rule 1, clause (*d*) and rules 3 and 6 of Chapter XI of this volume.	(*d*) The market value.
	(*e*) Where the subject-matter is a house or garden	According to the market value of the house or garden	(*e*) Section 3, rule 1, clause (*e*) and rules 3 and 6 of Chapter XI of this volue.	(*e*) In the case of a garden, the market-value. In the case of a house, the market value presumably, but this must be left to judicial decision.
Sec. 7, paragraph vi .	In suits to enforce a right of pre-emption	According to the value computed in accord-	The same as for section 7, paragraph V,	As for section 7, paragraph V, except as

		ance with paragraph V of this section) of which the land, house or garden in respect of which the right is claimed.	and rule 2 of section 3 and Chapter XI of this volume.	to a house, for which as above.
Sec. 7, paragraph vii .	In suits for the interest of an assignee of land revenue	Fifteen times on his net profits as such for the year next before the date of presenting the plaint	Section 8	The same as in column 3.
Sec. 7, paragraph viii .	In suits to set aside an attachment of land or of an interest in land or revenue, Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest	According to the amount for which the land or interest was attached	Section 8 . Section 3 and rules so far as they apply	The amount for which attached, not exceeding the value of the land and interest. The case of attachment of a house is not provided for, and must be left to judicial decision.
Sec. 7, paragraph ix .	*In suits against a mortgagee for the recovery of the property mortgaged, and in suits by the mortgagee to foreclose the mortgage; or, when the mortgage is made by conditional sale, to have the sale declared absolute*	*According to the principal-money expressed to be secured by the instrument of mortgage*	Section 8 *does no*[t] apply	*No provision is made,* and the value must be left to judicial decision.

Schedule showing the value of suits for purposes of computing court-fees and of determining the jurisdiction of the Courts, respectively

1	2	3	4	5
Value of suits for the purpose of computing court-fees under the Court Fees Act, 1870.			Value for the purpose of determining the jurisdiction of the Court, under the Suits Valuation Act, 1887, and the Rules and Directions made thereunder.	
Court Fees Act.	Nature of suit.	Value for court-fee purposes	Suits Valuation Act and Rules	Value for purposes of Jurisdiction.
Sec. 7, paragraph x	In suits for specific performance—			
	(*a*) of a contract of sale	According to the amount of the consideration	(*a*) Section 8	(*a*) The same as in column 3.
	(*b*) of a contract of mortgage	According to the amount agreed to be secured	(*b*) Section 8	(*b*) The same as in column 3.
	(*c*) of a contract of lease.	On the amount recoverable in the first year.	(*c*) Do.	(*c*) Ditto.
	(*d*) of an award	According to the amount or value of the property in dispute.	(*d*) Section 3 and rules under section 3	(*d*) As regards land, as valued by the rules under section 3 (*vide* rule 5). In regard to other property presumably the market-value, but this is left to judicial decision as section 8 does not apply
Sec. 7, paragraph xi	In suits between landlord and tenant as	Amount of rent for the preceding year.	Section 8 . .	*Note*.—The suits in this paragraph mostly fall

	described in clauses (a) to (f) inclusive			[illegible] Tenancy and Land Revenue Acts: where any such suit falls under the Civil Law, the value for court-fee purpose would be one year's rent, and for jurisdiction the same. The paragraph appears only to relate to land.
Sch. II, Articles 1-13 .	Miscellaneous applications and petitions.	As fixed in each case		No jurisdiction to value necessary
Sch. II, Article 14	Petitions under Native Converts Marriage Dissolution Act.	Fixed Value of stamp required—Rs. 5	.	Ditto
Sch. II, Article 17 .	Plaint or memorandum of appeal in each of the following suits —	The Court Fees Act lays down a minimum fixed fee of Rs. 10 But in rule 1 of Chapter X the High Court under powers conferred by section 9 of the Suits Valuation Act, VII of 1887, and with the previous sanction of the Local Government, has directed that suits of the nature described under head	As to land—section 4 and section 3 and rules	As in column 4
	I. To alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court		Other suits—not provided for	Do.

Schedule showing the value of suits for purposes of computing court-fees and of determining the jurisdiction of the Courts, respectively

1	2	3	4	5
Value of suits for the purpose of computing court-fees under the Court Fees Act, 1870			Value for the purpose of determining the jurisdiction of the Court, under the Suits Valuation Act, 1887, and the Rules and Directions made thereunder	
Court Fees Act.	Nature of suit	Value for court-fee purposes.	Suits Valuation Act and Rules	Value for purposes of Jurisdiction
	II. To alter or cancel any entry in a register of the names of proprietors of revenue paying estates	V and certain suits falling within the scope of head VI of Article 17 Schedule II, of the Court Fees Act, shall, for the purposes of that Act, be treated as if their subject-matter were of the value of Rs. 200 on which the fee is Rs 22-8-0 under the Punjab Act, VII of 1922.	Do Do	As in column 4.
	III To obtain a declaratory decree where no consequential relief is prayed		Do. Do.	Do.
	IV To set aside an award.			
	V. To set aside an adoption			
	VI Every other suit where it is not pos-			

		sible to estimate at a money value the subject matter in dispute, and which is not otherwise provided for by this Act				
Sch II, Article	18	Application under Schedule II, paragraphs 17 and 18, of the Code of Civil Procedure	Fixed stamp Rs. 10	Value of required—	As to land, section 4, section 9, rude 5, Chapter X of this volume.	As in column 4.
Do	19	Agreement under Order XXXVI, rule 1, of the same *Code*			As to land, section 4, section 9, rude 5, Chapter X of this volume.	Do.
Do	20	Every petition under the Indian Divorce Act, except petitions under s 44 of the same Act, and every memorandum of appeal under s 55 of the same Act	Fixed stamp Rs. 20	Value of required—	....	*Note*—The Court having jurisdiction is specified in the special laws in question
D	21	Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865				
Do	22	Plaint or memorandum of appeal in a suit by a *reversioner under* the Punjab customary Law for a declaration in respect of an alienation of ancestral land	Fixed stamp Rs 20	Value of required—	Section 9, rule 2, Chapter X of this *volume*	As in column 4

MADRAS HIGH COURT RULES.

RULES UNDER THE COURT FEES ACT, VII OF 1870 AND THE SUITS VALUATION ACT, 1887.

1. Computation of fees payable.

(1) In a suit to recover lands in which there are wells, the valuation for the purposes of the suit should be based on the value of the lands only and the wells should not be separately valued

(2) If an appeal is preferred by a plaintiff, the stamp fee will ordinarily be calculated on the claim or portion of the claim disallowed by the lower Court. If an appeal is preferred by a defendant, the stamp fee will ordinarily be calculated on the amount adjudged by the lower Court, provided that the parties are at liberty to relinquish a portion of their claim on expressing their intention of so doing in the memorandum of appeal

(3) The fee chargeable on appeals from orders under clause (c) of s 244 of the Code of Civil Procedure of 1882 (*i e*, s 47 of the Code of 1908) shall be limited to the amount chargeable under Art 11 of the Second Schedule to the Court Fees Act, 1870

(4) *Valuation of certain classes of suits under the Malabar Law*—Whereas the High Court is of opinion that the subject-matter of certain suits comprised in the classes of suits mentioned in clauses (b) and (c) of paragraph (iv) of section 7 of the Court Fees Act, 1870, *viz.*, suits for the removal of a karnavan or ejaman or for the enforcement of a right as karnavan, ejaman or member of a tarwad governed by Marumakkattayam or Alyasantana system of law or of a Nambudri illom, does not admit of being satisfactorily valued, and whereas by an order in Council, dated the 24th day of January, 1903, and numbered 86, Judicial, His Excellency the Governor of Fort St George in Council has sanctioned the following rules for determining the value of the subject-matter of such suits, the High Court under and by virtue of the authority conferred upon it by s. 9 of the Suits Valuation Act, 1887, and all other powers thereunto enabling hereby directs and orders that for purposes of the Court Fees Act, 1870, and the Suits Valuation Act, 1887, the value of the subject-matter of all such suits and appeals in such suits, instituted or presented on or after the 1st day of March, 1903, shall be determined according to the following rules:—

(*i*) The subject-matter of a suit for the removal of a karnavan or ejaman or for the enforcement of a person's right as karnavan or ejaman of a tarwad

governed by the Marumakkattayam or Alyasantana system of land or of a Nambudri illom, shall, for the purpose of the Court Fees Act, 1870 and the Suits Valuation Act, 1867, be valued at one-third of the amount at which the same would be valued under the provisions of the Court Fees Act, 1870, if the suit were one brought by a stranger *for the recovery of the whole property—movable* and immovable—possessed by the tarwad or illom to which the suit relates

(*ii*) The subject-matter of a suit for the enforcement of a person's right as member of a tarwad governed by Marumakkattayam or Alyasantana system of law or of a Nambudri illom, shall, for the purposes of the Court Fees Act, 1870, and the Suits Valuation Act, 1887, be valued at the amount at which, if the whole of the tarwad or illom property were by the consent of all equally divided among all the members (including the plaintiff) of the tarwad or illom, the plaintiff's share would be valued, with reference to the valuation of the suit under the Court Fees Act, 1870, if the suit were one brought by a stranger for the recovery of the whole property—movable and immovable—possessed by the tarwad or illom

(*iii*) In all such suits, the plaintiff or appellant shall state in the plaint or memorandum of appeal, as the case may be, the amount at which he values the entire property of the tarwad or illom and such valuation, unless the Court has reason to believe the valuation is not made *bona fide*, shall be accepted by the Court

(*Notification dated 20th Feb 1903 published at page 368,* Part II of the Fort St George Gazette, dated 3-3-1903.)

NAGPORE COURT.

JUDICIAL COMMISSIONER'S CIVIL CIRCULAR

PART II—8, PAGE 15.

VALUATION OF SUITS.

1. Under section 9 of the Suits Valation Act 1887 a under the same section of the said as applied to Berar, the Judicial Co missioner with the previous sanction the Chief Commissioner directs t suits of the following classes shall the purposes of the Court Fees A 1870, the Suits Valuation Act, 1887, Central Provinces Courts Act, 1904 and the Berar Courts La 1905, be treated as if the subject-matter of such suits were the value of Rs 400:—

Notification No 1641, dated the 28th Sept. '11 as amended by amendment No 19, dated 14-7-24 Notification No. 777|363-V, dated 12-4-1924.

(1) Suits for the restitution of conjugal rights, for decl ration of the validity of marriage, or for a divorc

(2) Suits for the custody or guardianship of a minor.

(3) Suits for a declaration that an adoption is valid invalid

Provided that if a suit for declaration that an adoption valid or invalid affects a title to property, then the value that property, if it exceeds Rs 400, shall be deemed to be t value of the subject-matter of the suit

2. In exercise of the powers conferred by section 3 the Suits Valuation Act, VII of 188 as applied to the Hyderabad Assigne Districts and with the previous sanctio of the Governor General in Counc the Resident is pleased to make the following rules for dete mining the value of land for the purpose of jurisdiction

Hyderabad Residency Order No 304, dated the 3rd December, 1891

I In suits for the possession of land (mentioned in sec tion 7, paragraph v, of the Court Fees Act VII of 1870) th value of the land for the purpose of jurisdiction shall be deeme to be as follows·

(1) When the land is held on Settlement for a perio not exceeding 30 years and pays the full asses ment to the Government a sum equal to ten (twelv half by amendment No 19, dated 19-7-1924) time the survey assessment.

(2) When the land is held on permanent Settlement for any period exceeding 30 years and pays the ful

assessment to the Government, a sum equal to twenty times the survey assessment

(3) When the whole or any part of the annual survey assessment is remitted, a sum computed under paragraph (1) or paragraph (2) of this rule, as the case may be, in addition to 20 times the assessment or the portion of assessment so remitted

(4) In other cases, the market value of the land.

II Where the land falls partly under one and partly under another of the classes mentioned or referred to in Rule I the value of the land in each class shall be separately calculated

III. In suits to enforce a right of pre-emption in regard to land (mentioned in section 7, paragraph vi of the Court Fees Act VII of 1870) the value of the land shall be computed in accordance with Rule 1

IV In suits for specific performance of an award in regard to land (mentioned in section 7, paragraph X, clause (d) of the Court Fees Act VII of 1870) the value of the land shall be computed in accordance with Rule 1

3. Numerous cases have come under notice in which suits for an injunction, for an easement, or for an account have been treated as suits of which it was not possible to estimate the money value

Under section 7, clause (iv) (d) to (f) of the Court Fees Act the plaintiff must in all such cases state the amount at which he values the relief sought and the plaint must be stamped in accordance with that valuation

4. The effect of section 7, clause VIII of the Court Fees Act, is apt to be misunderstood It seems to apply only to cases when the plaintiff has not petitioned the Court which ordered the attachment, but has proceeded at once to file a regular suit When an attachment has been petitioned against the executing Court, and the petition has either been allowed or disallowed and a suit has been filed by the unsuccessful party under Rule 63, Order 21 of the Code of Civil Procedure, such suit is one for a declaratory decree and the plaint should therefore bear a stamp of ten rupees in respect of the declaration or each of the declarations sought for

5. It must be borne in mind that when two or more reliefs are asked for in the same suit, a separate court-fee should be charged in respect of each relief

6. It is expected that careful attention will be paid to the question of court-fees The stamp on all plaints should be examined, and Courts should satisfy themselves that the right fee has been levied in each case.

7. The following rule for determining the value of land in Central Provinces for purpose of jurisdiction in the suits mentioned in the Court Fees Act, 1870, section 7, paragraph (v) (b) has been made by Local Government in exercise of the power conferred by section 3 of the Suits Valuation Act VII of 1887:

Circular No 11-8, Notification No. 1408-822-V, dated the 22nd July, 1924.

In suits for possession of land mentioned in section 7, paragraph (v) (b) of the Court Fees Act, 1870, the value of land for the purpose of jurisdiction shall be deemed to be as follows:

Where the land forms an entire estate or a definite share of an estate, paying annual revenue to Government or where the land forms part of such estate and is recorded as aforesaid and such revenue is settled, but not permanently 12½ times *the revenue so payable*

8. In all cases in which pleaders' fee are to be calculated upon a value other than the value as determined for the computation of Court Fees a note to this effect should be made at the end of the judgment In the absence of such note all Muharris attached to Civil Courts who are entrusted with the drawing up of decrees are strictly prohibited from calculating pleaders' fee otherwise than on the value as determined for the computation of court-fees

In suits by a mortgagee, to foreclose the mortgage, no note need be recorded The pleaders' fee should be calculated on the sum claimed in the plaint as due under the mortgage

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OUDH CHIEF COURT RULES

In supersession of notification No. 779, dated June 18, 1889, the Chief Court with the previous sanction of the Government, hereby under s 9 of the Suits Valuation Act, directs that the following classes of suits shall be treated for the purpose of the Court Fees Act, 1870, and of the Suits Valuation Act, 1887 as if their subject-matter were of the value hereinafter stated:—

I. (*i*) Suits in which the plaintiff sues the other party to an alleged marriage, either alone or with other defendants, for restitution of conjugal right . . Value Rs 10

(*ii*) Similar suits to establish, annul or dissolve a marriage . . . . Value Rs 20

(*iii*) Suits to establish a right to the custody or guardianship (including guardianship for the purpose of marriage) of a minor . . . . Value Rs 20

(*iv*) Suits to establish or annul an adoption or appointment by customary right of an heir . . Value Rs. 400

Value

(*a*) For the purposes of the Court Fees Act,
suits of class (i), Rs 100
suits of classes (ii) and (iii), Rs 200
suits of class (iv), Rs 400

(*b*) For the purpose of the Suits Valuation Act, 1887, such sum exceeding Rs. 500 and not exceeding Rs 2,000 as the plaintiff shall specify in the plaint.

Explanation

(1) Classes (i) and (ii) do not include petitions under any special Act relating to the dissolution of marriage

(2) Class (iii) does not include proceedings under the Guardians and Wards Act (VIII of 1890)

II. Suits for declaration that an alienation of immovable property made by a person alleged to have only a restricted power of alienation becomes void on such person's death or after some other determinate period.

Value

(*a*) For the purposes of the Court Fees Act, 1870, as determined by that Act,

(*b*) For the purposes of the Suits Valuation Act, 1887

(1) When the alienation is by a written instrument which declares the value of the interest purporting to be created, or the amount of the consideration for which the alienation is made, such value or amount,

(2) In other cases, the market-value at the date of institution of the suit of the property alienated, subject in either case to the provisions of Part I of the Suits Valuation Act, 1887, and of the rules in force under the said part, so far as those provisions are applicable

Explanation —When the property alienated is a right of occupancy in land, the value shall be deemed to be half the value of the land discharged from such right of occupancy

III Suits for account only, not being suits for such amount as may be found due on liquidation of accounts, and suits for account and administration as described in Ord XX, R 13 of the Code of Civil Procedure

Value

(*a*) For the purposes of the Court Fees Act, 1870, as determined by that Act;

(*b*) For the purposes of the Suits Valuation Act, 1887, such amount exceeding Rs. 100 and not exceeding Rs 500, as the plaintiff may state in the plaint

IV Suits for declaration (whether or not an injunction or damages be also claimed) that any of the following rights exists or does not exist, namely—

a right of way,
a right to open or maintain or close a door or window or a drain or a watershoot (*parnala*);
a right to or in a water course or to use of water;
a right to build, to raise or alter or demolish a wall or to use an alleged party-wall or joint-staircase.

Value

(*a*) For the purposes of the Court Fees Act, 1870, as determined by that Act;

(*b*) For the purposes of the Suits Valuation Act, 1887

(1) if damages are not claimed, such amount exceeding Rs 100 and not exceeding Rs 500, as the plaintiff may state in the plaint,

(2) if damages are claimed, the amount of such damages increased by Rs 100

V Suits in which the plaintiff in the plaint seeks to set aside an award, and applications to file in Court an agreement to refer to arbitration or in award in a matter referred to arbitration without the intervention of a Court under paragraphs 17 and 20 of the second Schedule of the Code of Civil Procedure, when or in so far as the award or the agreement relates to property:—

Value

(*a*) For the purposes of the Court Fees Act, 1870, as determined by that Act,

(*b*) For the purposes of the Suits Valuation Act, 1887, the market value of the property in dispute, subject to the provisions of Part I of the Suits Valuation Act, 1887, and of the rules in force under the said Part, so far as those provisions are applicable

VI The foregoing rules are subject to the following explanation:—

Subject to Rule III, a suit falling within any of the above descriptions shall not be deemed to be excluded therefrom merely by reason of the plaint seeking other relief in addition to that described in any of the foregoing rules

Valuation of suits—In cases where the rules made by the Chief Court under sec. 9, Act VII of 1887 (see the preceding

le), modify the provisions of the Court Fees Act VII of 1870, e former must be followed These cases are given below :—

Oudh Rules	Court Fees Act
(i) For establishing, annulling, or dissolving a marriage. Rs 200=Rs 15	Schedule II, Art 17, v where it is not possible to estimate at a money-value the subject-matter in dispute, Rs 10
ii) For custody or guardianship of a minor Rs 200=Rs 15	As above Rs 10
i) For annulling an adoption, Rs 400=Rs 30	Schedule II, Art 17, v To set aside an adoption, Rs 10

Effect of the Rules.—It is not within the jurisdiction of ne Law Courts to consider as to whether in case of particular s of suits the High Court and the Local Government exercised eir discretion wisely in raising the fixed court-fees by framing ie rules under section 9 of the Suits Valuation Act and whether r not in a suit of the present class a court-fee *ad valorem* on e property is a reasonable fee The rules as they stand have e force of law The C P Gazette Notification, dated 8th eptember 1911 as reproduced in Judicial Commissioner's Civil ircular II was published with the intention of effecting this sult

This was a suit for declaration that the plaintiff was the dopted son of one B The Judicial Commissioner said at 60 "It appears to me that the court fee of Rs 10 fixed for uits falling under Article 17 was an arbitrary fee fixed for onvenience and that section 9 of the Suits Valuation Act enacted hat this fee fixed on an arbitrary valuation, should be regarded s provisional, and liable to be supplanted, in the case of selected lass of suits by a court-fee based on what the High Court and the ocal Government considered to be reasonable basis of valuation," *Ganpatrao* v *Laxmi Bai*, 43 Ind Cas 64 15 N L R 24

"Section 9 provides *inter alia* that it is competent to the High Court with the previous sanction of the Local Government o frame rules for the valuation of suits referred to in paragraph v of section 7 of the Court Fees Act and for determining the jurisdiction of Courts, but no such rules have been framed applicable to cancellation and delivery up of an instrument in writing. Until such a rule is framed the valuation given in the plaint by the plaintiff cannot be revised," *Chinammal* v *Madarsa Rowther*, " Mad 480

A suit for a declaration that an adoption is valid or invalid hould be valued at Rs 400 under the rules framed unless

affects a title to property exceeding Rs. 400 in value. The proviso to the circular is anomalous, *Harihar Rao* v. *Salu Bai and another*, 103 I C 268, 1927 A.I R 256 (Nag).

Application.—Declaratory suits —Rule 2 of the Rules of the Madras High Court dated 26th February, 1908, does not apply to the case of a declaratory suit where no consequential relief is prayed as the value for the purpose of jurisdiction is the value of the property likely to be affected by the declaration, *C V Sankaran Nair* v *C V Gopala Menon*, 30 Mad 18

Where rules have not been framed the Court Fees Act would apply and the fees payable are those prescribed in the first and second Schedules to the Act, *W. M. Varadaraja Mudaliar* v. *M Arumugam Pillai*, 1925 A I R. 1216 (Mad); 91 I C 751: 22 L W 15

Restitution of conjugal rights—Under section 8 of the Suits Valuation Act (Act VII of 1887), it appears to be open to the High Court in a case of this description to direct, with the previous sanction of the Local Government, that the subject-matter is to be valued in a specified manner, *Aklemunnessa Bibee* v. *Mahomed Hatim*, 31 Cal. 849: 8 C W.N 705 (709)

But the Punjab Chief Court framed Rules under this section and the valuation must be made under the Rules, and any prayer which is ancillary to the main prayers need not be valued, *Nathu* v *Musst Chuhri*, 20 P L R 1919. 52 I C. 1010

10. [*Repeal of sec. 32, Punjab Courts Act, 1884 (XVIII of 1884)*]. *Repealed by the Repealing and Amending Act, 1891 (XII of 1891).*

PART III.

SUPPLEMENTAL PROVISIONS.

Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes

11. (1) Notwithstanding anything in section 578 of the Code of Civil Procedure, an objection that by reason of the over-valuation or under-valuation of a suit or appeal a Court of first instance or lower appellate Court which had not jurisdiction with respect to the suit or appeal exercised jurisdiction with

respect thereto shall not be entertained by an appellate Court unless—

(*a*) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded or in the lower appellate Court in the memorandum of appeal to that Court, or

(*b*) the appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in clause (*a*) of sub-section (1), but the appellate Court is not satisfied as to both the matters mentioned in clause (*b*) of that sub-section and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of first instance or lower appellate Court

(3) If the objection was taken in that manner and the appellate Court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals, but if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal

(4) The provisions of this section with respect to an appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under section 622 of the Code of Civil Procedure or other enactment for the time being in force.

(5) This section extends to the whole of Bri India, and shall come into force on the first day of 1887.

NOTES.

Alteration in law.—For sec 622 of the Code of Civil Procedure (Act XIV of 1882) see now sec. 115 of the Code of 1908 (Act V of 1908), sec 578 of the Code (Act XIV of 1882) is now sec 99 of the Code of Civil Procedure (Act V of 1908).

(b) Reasons to be recorded in writing.—The appellate Court is only required to record *reasons* if it holds that the suit was over-valued or under-valued, and that the over-valuation or under-valuation has prejudicially affected the disposal of the suit, but it is not required to record reasons in writing for holding that the under-valuation has not prejudicially affected the disposal of the suit, *Syed Musa Imran* v. *Bhagwan Das*, 100 I C 546. 1927 A I R 359 (Allahabad)

Scope.—The plaintiff must under Or. 7, R. 1, C. P. C, state the value of the suit so far as the suit admits of being valued It was not intended by legislature that the valuation of a suit should be arbitrary or reckless, or that the plaintiff should be at liberty to choose the Court in which to file the suit. Where a defendant objects to the valuation, such objection can be heard even at the hearing of the appeal if such an objection was taken in the Court of first instance at or before the first hearing, *Kamta Siroman Prosad Singh* v *Gayadin*, 25 O.C. 184: 69 Ind Cas 201

Section 11 of the SuitsValuation Act governs all cases of erroneous valuation including valuations made under the rules passed under power, *Sadar Khan* v *Musst. Aisha Bibi*, 6 Lah 105· 72 P L R 1924 88 I C 72: 1925 A.I R 290 (Lah.). See *Musst Jagtaram Kuer* v *Musst Munder Kuer*, (1934) 13 Pat 290: 150 I C 378 1934 A I R 240 (Patna)

Collateral proceedings.—The principle of s 11 of the Suits Valuation Act must be extended to collateral proceedings to attach the decree passed, *Nane Narasimham* v. *Donepudi Subramaniam*, 98 I C 446. 1927 A.I R. 201 (Madras), see also the same case at a later stage reported in 1929 A.I.R. 323 (Madras).

Application.—This section does not apply where the valuation is fixed by Rules having the force of law and is not discretionary, *Khuda Yar* v *Wahab Din*, 47 P.L R. 1901: 35 P R 1901, *Sanga* v *Mali*, 214 P.R. 1910

This section is applicable whether the under-valuation or over-valuation is due to a mistake in estimating the value of the subject-matter or due to a mistake in principle, *Krishnasami* v. *Kanakasabai*, 14 Mad 183: 1 M L.J 234

Section 11 of the Suits Valuation Act applies only to those cases where the valuation of suit is in the discretion of the parties at Court and not to those cases where the valuation is fixed by

the rules, and in the latter class of cases section 11 of the Suits Valuation Act does not cure the defect of over-valuation and under-valuation and the disposal of suit by a wrong Court is without jurisdiction, *Mahomed Shah* v. *Abdulla Shah*, 56 Ind Cas 918

Effect of the section.—The effect of this section is simply to treat the over-valuation or under-valuation as a mere irregularity contemplated under section 578 (section 99 of the present Code) of the Code of Civil Procedure The objection should be taken at the earliest opportunity, *Raghavacharior* v *Raghavacharior*, 20 M L J 726

Section 11 of the Suits Valuation Act has the effect of curing a want of jurisdiction caused by improper valuation not only in cases when there has been a final disposal by the lower appellate Court, but also when there has been a remand to the original Court for a finding, *Raman* v *Secretary of State for India in Council*, 24 Mad 427 11 M L J 215

Where the suit was instituted in a wrong Court due to erroneous valuation, section 11 of the Suits Valuation Act gives the plaintiff adequate protection, *Sailendra Nath Mitra* v *Ram Chandra*, 34 C L J 94· 25 C W N 768 66 Ind Cas 268 See also, *Balkrishna Narayan* v *Janki Bai*, 33 Bom 331 22 Bom L R 280

Section 11 of the Suits Valuation Act governs all cases of erroneous valuation irrespective of the question whether the valuation is determined by rules having the force of law or in any other manner (132 P R 1894 and 35 P R 1901 4 P L R 1901 overruled), *Sardar Khan* v *Mt Aisha Bibi*, 1925 A I R 290 (L) I L R 6 Lah 105· 88 I C 72 F B

Where no objection was taken at earlier stages of a suit and it did not appear that the party was prejudicially affected by the decision, the case is covered by sec 11 of the Suits Valuation Act, *Budha Mal* v *Ralha Ram*, 107 I C 620 I L R 9 Lahore 418 1928 A I R 825 (Cal)

Clause (2).—Section 11 of the Suits Valuation Act prohibits an appellate Court from entertaining an objection that by reason of the under-valuation of a suit a Court not having jurisdiction to try the same exercised jurisdiction with respect thereto, unless the objection was taken in the Court of the first instance at or before the date on which the issues were framed or the appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit was under-valued and that the under-valuation thereof has prejudicially affected the disposal of the suit, and it has before it the materials necessary for the decision of the appeal, it is authorised by cl 2 of section 11 of tl Suits Valuation Act to dispose of the appeal as if there '

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Section 11 of the SuitsValuation Act governs all cases of erroneous valuation including valuations made under the rules passed under power, *Sadar Khan* v *Musst Aisha Bibi*, 6 Lah. 105 72 P.L R. 1924 · 88 I.C. 72, 1925 A I R. 290 (Lah.) See *Musst Jagtaram Kuer* v *Musst Munder Kuer*, (1934) 13 Pat 290 · 150 I C 378 1934 A I R 240 (Patna)

Collateral proceedings.—The principle of s 11 of the Suits Valuation Act must be extended to collateral proceedings to attach the decree passed, *Nane Narasimham* v. *Donepudi Subramaniam*, 98 I C 446 1927 A I R 201 (Madras), see also the same case at a later stage reported in 1929 A.I.R. 323 (Madras).

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Clause (2).—Section 11 of the Suits Valuation Act prohibits an appellate Court from entertaining an objection that by reason of the under-valuation of a suit a Court not having jurisdiction to try the same exercised jurisdiction with respect thereto, unless the objection was taken in the Court of the first instance at or before the date on which the issues were framed or the appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit was under-valued and that the under-valuation thereof has prejudicially affected the disposal of the suit, and it has before it the materials necessary for the decision of the appeal; it is authorised by cl 2 of section 11 of the Suits Valuation Act to dispose of the appeal as if there had

been no defect of jurisdiction in the Court of first instance, *Syed Musa Imran* v. *Bhagwan Das,* 100 I.C. 546: 1927 A.I.R 359 (Allahabad)

Under cl (2) of sec 11 of the Suits Valuation Act even if objection to jurisdiction be taken at an early stage in the trial Court, the appellate Court is required to dispose of the appeal as if there had been no defect of jurisdiction, unless it is satisfied that the over-valuation or under-valuation has prejudicially affected the disposal of the suit or appeal on its merits, *V S Aiyen* v *Maung Nyum and another,* 1929 A I.R 228 (Rang)

Clause (3).—Section 11 of the Suits Valuation Act provides *inter alia* that if a Court has decided a suit which it was not competent to decide, owing to an under-valuation thereof, then, if the appellate Court is satisfied that an objection as to valuation of the suit was raised in the trial Court and that the determination of the suit by a Court which was not competent to try it, has prejudiced the defendant, then such Court shall hear the appeal, if there is sufficient material on the record to enable it to dispose of the appeal If, however, the Court finds it necessary to have further evidence recorded or to remand the case, then the further evidence shall be recorded by and the remand shall be made to the Court which was competent to hear the suit The law nowhere authorises an appellate Court to return the plaint for presentation to the proper Court at the stage at which the learned District Judge returned it, *Rajwant Sing and others* v. *Mutalli and others,* 116 I.C. 209.

Prejudicially affected.—The appeal Court cannot interfere unless it is shown that the under-valuation has prejudicially affected the disposal of the case, *Dinesh Chandra* v. *Sarnamoyi Debi,* 1 C.W.N. 136, *Bishnu* v. *Dal Singh,* 71 P L.R. 1906: 55 P.R. 1906

Decision by inferior Court.—Where a Court of inferior jurisdiction disposes of an appeal which should have been heard by a superior tribunal, there is ground for thinking that the parties are prejudicially affected, *Cheloo* v. *Kalidas,* 21 P.R. 1918: 44 Ind Cas. 816

A party to a suit cannot be said to have been prejudicially affected within the meaning of sec. 11 of the Suits Valuation Act, merely because of a change in the forum of appeal consequent upon the under-valuation.

Section 11 of the Suits Valuation Act when referring to an under-valuation or over-valuation "prejudicially affecting the disposal of suit or appeal on its merits" is not considering at all the different rules of procedure that there may be an appeal from one Court to another.

A trial of a suit by a District Munsiff instead of a Sub-Judge owing to an under-valuation, cannot be deemed to be "prejudice" within the meaning of section 11 of the Suits Valuation Act to the unsuccessful party on account of the party having a right of 2nd appeal to the High Court on a question of law only, instead of a regular appeal on questions of facts also, *Naduvil Edom Karnavan and others* v *Cheriya Parvathi Nethia and others,* 73 Ind Cas. 87: (1924) A.I.R. 6 (Mad.) 46 Mad 631: 45 M L J 135: 1923 M W N. 489· 18 L W 1

The question whether a disposal of a suit has naturally prejudiced a party is to be decided on the facts of each case. The word used is "disposal" and not "decision".

The disposal of a suit on the merits is prejudicially affected when that disposal is made by a District Judge instead of being made by a bench of two judges of the Court of the highest jurisdiction in a province and that such lack of jurisdiction cannot be cured by section 11 of the Suits Valuation Act, *Sheoraj Singh* v *Musst Phulbasa Kuar and another,* 1925 A I R 561 (Oudh): 28 O C 203. 85 I C 445 See also *Syed Musa Imran* v. *Bhagwan Das,* 100 I C 546: 1927 A.I.R 359 (Allahabad)

A suit was valued at less than Rs 5,000 which was found on evidence by the trial Court as correct The suit was decreed and an appeal was preferred before the District Judge who decreed the appeal and dismissed the suit On a further appeal to District Judge the High Court held that the suit is above Rs. 5,000, hence the appeal as to the District Judge is incompetent and the decree passed by him is without jurisdiction, held further, that the hearing of the appeal by the District Judge had prejudicially affected the decision of the case on the merits within the meaning of section 11 of the Suits Valuation Act, inasmuch as if the appeal had been filed in the High Court, it would have gone into evidence in the case and dealt with the questions of fact, whereas it was precluded from doing so in a second appeal if the case be heard by the District Judge in the first instance, *Mahanta Rukmin Das* v *Deva Singh alias Mahanta Deva Das,* I L R 5 Patna 505· 7 P L T 407. 96 I C 242. 1927 A I R 351 (Patna).

The mere fact that a party was deprived of the right of appeal on facts before the High Court cannot be held to prejudicially affect the disposal of the appeal on the merits within the terms of section 11 of the Suits Valuation Act, *Nane Narasimham* v *Donepudi Subramaniam,* 98 I C 446· 1927 A I R 201 (Madras)

There is no ground for holding that a party has been prejudiced merely because the appeal has been heard by an inferior instead of a superior Court, *Banni* v. *Mangu,* 114 I C. 440

Valuation.—(*over-valuation and under-valuation*).—If th valuation of the suit put on the plaint is contested it is the dut of the Court to adjudicate and find what the correct valuatio is, *Mohini Mohan Missir* v *Gour Chandra*, 5 Pat.L.J. 397 1921 Pat. C.W.N. 195: 1 Pat L.T. 390: 56 Ind. Cas. 762.

The question whether or not a suit has been under-value should be decided on evidence, and documents which contai description are not a safe criterion, *Ram Das* v *Ajudhia*, 63 Ind Cas 685.

Arbitrary valuation—In *Aklemunnessa Bibee* v. *Mahome Hatim*, 31 Cal 849: 8 C.W.N. 705 (759) the Calcutta Hig Court said:—

"It seems to us to be clear, by the phrases 'over-valuation and 'under-valuation' the legislature intended to include all case of erroneous valuation and that the language of section 11 is comprehensive enough to cover a case like the present, in which the Court exercised jurisdiction by reason of an arbitrary valuation where no valuation ought to have been made, because *the suit is incapable of valuation*

Bona fide over-valuation—In case of *bona fide* over-valuation the mere fact that the suit has been over-valued does not deprive the Court in which it is brought, of jurisdiction and alter the jurisdiction of the appellate Court, *Rajendra Lal Gossami* v *Shama Charan Lahiri*, 5 Cal 188: 4 C.L.R. 417.

But the whole suit should not be dismissed because in the opinion of the lower appellate Court, it would have been instituted in some other Court, *Mohee Lal* v *Khetraram Marwari*, 25 W.R 76

Mistake.—An erroneous assumption, of jurisdiction, through over-valuation does not by itself vitiate the proceedings, *Krishnasami* v. *Savoy Vijia Raghunatha*, 1 M L.J. 234.

Exaggerated valuation—Where the Subordinate Judge on appeal, was of opinion that claim had been designedly exaggerated and therefore ordered the plaint to be returned to be presented to the Small Cause Court, *held*, as the suit was tried by the first Court and as the lower appellate Court did not find that over-valuation has prejudicially affected the disposal of suit on its merits, the objection as to jurisdiction should not have been given effect to and the lower appellate Court was wrong in directing the return of plaint, *Hamidunnissa Bibi* v. *Gopalchandra Malakar*, 24 Cal 661; *Muhammad Sharafulla* v. *Hira Lal*, 16 O.C 257: 21 Ind Cas. 52.

Deliberate exaggeration—Where the trial Court tried the suit on the merits and gave a partial decree to the plaintiff, the appeal Court, on appeal preferred by the defendants cannot, without finding that the disposal of the suit has been prejudi-

cially affected by such trial, entertain the objection as to jurisdiction and should not have given effect to it, *Hamidunnissa Bibee v. Gopal Chandra Malakar*, 24 Cal. 661: 1 C W.N 556 See also *Kali Pujari v Manjaya*, 21 Mad 271

Under-valuation—See *Mewah Lal v Behary Lal*, 14 W R. 195; *Ango Pura Chowdhury v Meah Bibee*, 10 W R. 207, *Sheikh Muzlur Ali v. Mussammat Basoo*, 8 W R 46, *Brojo Coomar Sen v Ishan Chander Das*, 3 C L R 1

Where a suit for pre-emption was under-valued but the suit was tried by the Munsiff, the District Judge on appeal declined to hear the appeal and refused to allow the appellant to make up the deficiency in payment of court-fees as the period of limitation has expired The Chief Court *held*, that the District Judge has overlooked the provisions of section 11 of the Suits Valuation Act and the proceedings before the Munsiff were not void for want of jurisdiction and "the deficiency in court-fees could be levied after the period has expired" and remanded the case for trial by the Divisional Judge, *Ram v Taja* 173 P L R 1903 74 P R 1903

Where the suit was valued at less than Rs 5,000 while its real value was above Rs 5,000 and was heard by the District Judge without objection *held*, that the High Court in second appeal cannot entertain the objection, *Kishen Lal v Rup Chand*, 9 All W N 169

In cases of reckless under-valuation the plaintiff is not entitled to have protection of section 14 of the Limitation Act, *Rukiya Bibi v Mubarak Ali*, 14 Ind Cas 86

The over-valuation or under-valuation of a suit does not affect a decree unless the disposal of the suit on the merits has been prejudicially affected, *Mool Chand Moti Lal v Ram Kishen*, 55 All 315 1933 A L J 222 143 I C 275· 1933 A I R 249 (All) F B

Omission to value—Mere omission to value if such omission has not prejudicially affected the decision of the case on the merits, will be cured by s 11 of the Suits Valuation Act, *Maung Nyi Maung v Mandalay Municipal Committee*, 12 Ran. 335: 1934 A I R 268 (Ran.).

Error not affecting jurisdiction—An error in valuation of a suit is not an error, defect or irregularity which affects the merits of the case and an appellate Court is restrained by section 350, C P C (section 99 of Act V of 1908) from ordering reversal of a decree on such account, *Guddadhur Bannerjee v. Premomoyee Debi*, 10 W R 286, *Ram Gutty v Goona Monee Debia*, 11 W R 177

But in cases of under-valuation, the lower appellate Court can modify or reverse the case Section 350, C P C (99 of

Act V of 1908) does not prohibit such a modification or reversa *Hurry Pandey* v *Bassoo,* 11 W R. 257.

Objection as to jurisdiction.—(a) *Not taken in the tria Court*

Where the plaintiff instituted a suit in the Munsiff's Cou and made an arbitrary valuation of the suit and the Munsi exercised jurisdiction without any objection on the part of th defendant, *held,* that the suit should not be dismissed by a appellate Court, having regard to the provision of section 1 of the Suits Valuation Act, on the ground of want of jurisdic tion, *Aklemunnessa Bibi* v. *Mahd Hatim,* 31 Cal. 849: 8 C.W N 705, but the above case was dissented from in *Jan Mahomma* v. *Masher Bibi,* 34 Cal 352: 11 C W N. 458 and *Zair Hussai Khan* v *Khurshed Jan,* 28 All 545.

An objection as to pecuniary jurisdiction raised for the 1s time before the High Court in revision cannot be maintaine unless it appeared that the under-valuation has not prejudicially affected the merits of the case, *Naran Chandra Ghose* v. *Rangala Ghose,* 37 C W N 764

An objection as to jurisdiction of a Court must be raised in the trial Court and if not so taken, it cannot be raised afterwards, *Bankai Sahu* v *Mosahib Ali,* 46 Ind. Cas 892

An objection as to jurisdiction not taken in the written statements nor raised at the time of settlement of issues, cannot be taken at the time of argument, *Narayan Jha Narone* v. *Jagni Prasad,* 13 Pat 329: 15 P L T. 139. 147 I C. 1222: 1934 A I R 184 (Pat) S B , *Musst Urehan Kuer* v. *Musst. Kabutri,* 13 Patna 344· 15 P.L T 131: 148 I.C 579: 1934 A.I R. 204 (Pat) S B

Where no objection as to jurisdiction was taken by the defendant in the trial Court nor any objection was taken in the lower appellate Court, but on second appeal the stamp reporter of the Patna High Court took objection as to jurisdiction and valuation, and it did not appear that the disposal of the suit has been in any way prejudicially affected; held that the objection cannot be entertained, *Kesho Prasad Sing* v. *Lakhu Rai and others,* 75 Ind Cas 305: 1923 A I R 581 (Patna): 4 Pat.L T 525: 1923 Pat. C W N. 258

A objection to jurisdiction can only be raised on appeal if there be found that the wrong valuation has prejudicially affected the merits of the case or the disposal of the suit, *Dongarn Das* v *The Municipal Committee, Fazilka,* 1929 A.I R. 5?6 (Lah.).

Rules under the Suits Valuation Act.—(a) An objection as to jurisdiction not taken in the trial Court but on second appeal

before the High Court cannot be entertained even if a higher valuation was required by the rules framed under the Suits Valuation Act, *Kalu and others* v *Sadhu Singh*, 100 I.C. 166

(*b*) *Other Cases*.—An objection as to disposal of appeal by the District Judge cannot be questioned as being without jurisdiction on the ground that the valuation is beyond the pecuniary jurisdiction of the District Judge unless the disposal of the suit has prejudicially affected the decision of the appeal, *Satya Kinkar Sahana* v. *Shiba Prosad Singh*, 4 Pat L J 447

Objections to jurisdiction will not be entertained by the appeal Court unless the erroneous valuation has prejudicially affected the disposal of the suit on the merits, *Ammal* v *Krishna Nair*, 62 Ind Cas 715. *A Vedaji Baskara Tirumal Rao* v *Subramania Gurukhal*, 52 Ind Cas 992 But see *Ghulam Akbar Khan* v *Musst Bakht Bibi*, 116 P L R 1915 229 P W R 1915: 29 Ind Cas 796 *When a suit was improperly valued by* the plaintiff, he can in second appeal raise the question as to his own valuation *Cheloo* v *Kali Das*, 21 P R 1918 44 Ind Cas 816 See also *Syed Musa Imran* v *Bhagwan Das*, 100 I C 546: 1927 A I R 359 (Allahabad)

NOTE.—It is doubtful if the provisions of the Suits Valuation Act can override the pecuniary limits of jurisdiction of various Courts as fixed in the Civil Courts Acts in the various Provinces

(*c*) *Objection in execution proceedings*.—An objection as to under-valuation, *if not taken in the suit*, cannot be taken in execution proceedings, *Musst Jagtaran Kuer* v *Musst Munder Kuer*, 13 Patna 290 150 I C 378 1934 A I R 240 (Patna), *Gian Chand* v *Charanji Lal*, 36 P L R 238 1934 A I R 804 (Lah)

Effect of action by the plaintiff.—The plaintiff who in a suit for pre-emption notwithstanding the objection of the defendant as to the valuation of the suit, actively prosecuted it and neglected to go into the question as to jurisdiction, cannot be heard to say in appeal that the trial Court had no jurisdiction to try the suit The High Court said that even if the objection was raised at the proper time, the appellate Court must be satisfied that the under-valuation has prejudicially affected the disposal of the suit, before the objection can be given effect to, *Sankar Nath* v *Trilok Singh and another*, 11 Lah 15 123 I C 122 1929 A I R 509 (Lah)

Where it is open to the plaintiff to put his own valuation on his suit, and he elects to value it at an amount which is within the jurisdiction of the particular class of Court, it is not open to him afterwards to say that it is of a higher value so that it may fulfil the requirements of sec 110 of the Code

of Civil Procedure, *Lallubhai Prag* v. *Bhimbhai Dajibhai*, 1929 A I R. 341 (Bom).

Appellate Court returning plaint.—Where an appellate Court makes an order returning a plaint for presentation to the proper Court, the Court of first instance having heard and decided the suit, it is the duty of the appellate Court under section 11 of the Suits Valuation Act, 1887, first to find and to record its reasons for so doing, where the error in valuation complained of has prejudicially affected the disposal of the suit on the merits, *Wahidullah* v *Kanhaya Lal*, 25 All. 174; *Hamidunnissa Bibi* v *Gopal Chandra Malakar*, 24 Cal 661, *Raghunath Charan Singh* v *Shamo Koeri*, 31 Cal 344, *Dalip Singh* v *Kundan Singh*, 36 All 58. 12 All.L.J. 21: 22 Ind Cas. 614, *Krishna Sami* v. *Parameswaram*, 6 Mad 140.

When a Court finds that a suit has been under-valued and that the plaintiff has done so intentionally, it may require the plaintiff to make a fresh valuation and pay proper court-fees, but it has not power to amend the valuation itself, *Ashiq Ali* v *Imtiaz Begum*, 39 All 723 15 A L J. 794.

Consent of parties does not confer jurisdiction.—If the Court had not jurisdiction at the initial stage then no consent by parties can confer jurisdiction, *Rajlakshmi Dasse* v. *Katyayani Dasse*, 38 Cal 639, *Ledgard* v *Bull*, 13 I A 134: 9 All. 191.

Joinder of causes of action.—Where several causes of action are joined together in one suit, which brought the valuation over Rs 1,000 that valuation would confer upon a Subordinate Judge jurisdiction to try the suit, notwithstanding the fact that if these suits were instituted separately a Munsiff will have jurisdiction to try the suit, *Mashoollah Khan* v. *Ram Lal Agarwallah*, 6 Cal 6

Proceedings pending at commencement of Part I or Part II

12. Nothing in Part I or Part II shall be construed to affect the jurisdiction of any Court—

(*a*) with respect to any suit instituted before rules under Part I applicable to the valuation of the suit take effect, or Part II has come into force, as the case may be, or

(*b*) with respect to any appeal arising out of any such suit.

APPENDIX I.

A

Notifications reducing and remitting court-fees by Governor General in Council.

No 4650, dated the 10th September, 1889 [Gazette of India, 1889, Part I, p 506] and subsequent notifications

Under section 35 of the Court Fees Act, VII of 1870, and in supersession of all previous notifications under that section it is hereby notified that, in exercise of the power to reduce or remit, in the whole or in any part of British India, all or any of the fees mentioned in the first and second Schedules to the said Act, the Governor-General in Council has been pleased to make the reductions and remissions hereinafter set forth, namely·

A—General for the whole of British India

(1) to remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use, and on applications for renewal of stamp paper which has become spoiled or unfit for use,

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government;

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described and that the value of the stamp should, in his opinion, be refunded;

(4) to remit the fees chargeable on—

(a) copies of village settlement-records furnished to land-holders and cultivators during the currency or at the termination of settlement-operations;

(*b*) lists of fields extracted from village settlement-records for the purpose of being filed with petitions of plaint in Settlement Courts.

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement-records (other than lists of fields) extracted as aforesaid, which may be filed in any Court or office,

(5) to declare that the fee chargeable on a plaint filed in a suit for possession of immoveable property under section 9 of the Specific Relief Act, I of 1877, shall be one-half of the amount prescribed in the scale of fees for plaints mentioned in article 1 of the First Schedule

(6) to direct that the fee chargeable on appeals from orders under clause (*c*) of section 244 of the Code of Civil Procedure (Act XIV of 1882) shall be limited to the amounts chargeable under article 11 of the Second Schedule;

(7) to remit the fees chargeable on security-bonds for the keeping of the peace, by, or good behaviour of, persons other than the executants,

(8) to remit the fee payable under article 1, clause (*c*), of the Second Schedule on an application or petition presented to a Chief Commissioner, when the application or petition is accompanied by a petition to the Government of India and contains merely a request that that petition may be forwarded to the Government of India,

(9) to remit the fees chargeable under articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or Offices for the private use of persons applying for them:

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer;

(10) to remit the fees chargeable, under paragraph 4 of clause (*a*) and paragraph 2 of clause (*b*) of Article 1 of the Second Schedule, on application for orders for the payment of deposits in cases in which the deposit does not exceed Rs 25 in amount:

Clause (5) is superseded by the amendment made in Article 2 of Schedule I of the Court Fees Act, 1870, by the Repealing and Amending Act, 1891 (12 of 1891), Sch II.

Clause (6) as it now stands is the subject of a separate notification and is inserted here in this form for convenience of reference See Notification, No. 4344-S. R., dated the 6th October, 1893, Gazette of India 1893, Pt. I, p 575

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application;

(11) to remit, with reference to clause (xi) of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land,

(12) to remit the fees chargeable on applications for loans under the Land Improvement Loans Act, XIX of 1883, or the Agriculturists' Loans Act, XII of 1884;

(13) *to remit the fee chargeable on an application made by* a person to the Collector under the second paragraph of section 39 of the Indian Stamp Act, I of 1879, for the return to that person, or to the Registration officer who impounded it, of a document impounded, and sent to the Collector by a Registration officer;

(14) to remit the fee chargeable on an application made for transfer of a stock-note from one circle to another under paragraph 6 of Resolution No 2566, dated the 20th August, 1885;

(15) to remit the fees chargeable on the following documents, namely —

(*a*) a copy of a charge framed under section 210 of the Code of Criminal Procedure, 1882, or of a translation thereof, when the copy is given to an accused person,

(*b*) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person,

(*c*) copy or translation of a judgment in a case other than a summons-case, and a copy of the heads of Judge's charge to the jury, when the copy or translation is given under *section 371 of the said Code to an* accused person,

(*d*) copy or translation of the judgment in a summons-case, when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail,

(*e*) copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid,

(*f*) copy furnished to any person affected by a judgment

or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is copy which, on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment,

(*g*) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or pleader or other person especially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court;

(*h*) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings,

(*i*) copies of judgments or depositions required by officers of the Police Department in the course of their duties

(16) to direct that the fee chargeable—

(*a*) on the application to the Collector, or to any officer or person discharging all or any of the functions of a Collector, with respect either to liability to assessment or to the amount of an assessment under Act II of 1886 (*an Act for imposing a tax on income derived from sources other than agriculture*), and

(*b*) on a copy of an order under section 26 of the same Act, shall be limited to one anna;

(17) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office;

(18) to direct that, when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional share of that part shall, for the pur

poses of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separtely assessed on that part as may be rateably payable in respect of the share;

(19) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification,

(19*a*) to remit the fee chargeable on an application for the grant of a license for the vend of stamps;

(19*b*) to direct that no court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine the refund of which has been ordered by competent authority;

(19*c*) to remit the fees chargeable on applications for copies of documents detailed in clauses 4 and 15, *supra*

(19*d*) to remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1882 (VI of 1882), provided that the said share or interest was registered in a branch register in the United Kingdom under the Indian Companies (Branch Registers) Act, 1900 (IV of 1900), and that such member was at the date of his decease domiciled elsewhere than in India,

(19*e*) to remit the fees chargeable on applications presented to officers of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed,

(19*f*) to remit the fee chargeable on applications and petitions presented to a Collector or any Revenue Officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province,

(19*g*) (*a*) to remit all fees payable under Schedule II upon

Clause (19a) was inserted by *Notification No 4276-S R*, *dated 23rd* [illegible] 1897, Pt I, p 864

separate Notification (No. 3389- [illegible] e of India, 1896, Pt. I, p. 604). [illegible] enience of reference.

separate Notification (No 1180- [illegible] tte of India, 1905, Pt. I, p 117 [illegible] subject of separate notif[illegible] 17th February, 1900, 4385-S [illegible] dated the [illegible] October, [illegible] I, pp. 100, [illegible] and 760, [illegible] tively.

applications relating to licenses or duplicates granted or renewed under the Indian Arms Rules, 1909, other than licenses or duplicates of the nature hereinafter referred to in sub-head (*b*), and

(*b*) to reduce to one anna all fees exceeding one anna payable under the schedule upon applications relating to licenses or duplicates granted or renewed under the said rules in respect of which—

(i) no fee is payable under the said rules, or

(ii) the fee payable under the said rules has been collected in full.

(19*h*) to remit the fees chargeable on applications for the grant of licenses of the nature mentioned in items 8 and 9 of the Schedule II appended to the Indian Explosives Rules, 1914, to possess gun-powder, other explosive or detonators required *bona fide* for blasting purpose No 1938-F, dated 17-12-1914, Gazette of India, 19-12-1914, Part I

(19*i*) to make in the whole of British India the remissions hereinafter set forth in the fees leviable under articles 11, 12, 12A of the first Schedule of the said Act, on the property of any *person subject to Military law either under the Army* Act (44 and 45 Vict C 58) or under the Indian Army Act (VIII of 1911), who is killed or dies of wounds inflicted, accident occurring or disease contracted within twelve months before the death, while on active service in the present war, namely:—

(*a*) where the amount or the value of the property in respect of which the grant or probate or letters of administration is made or which is specified in the certificate under the Succession Certificate Act, 1889 or in the certificate under Bombay Regulation No 8 of 1827, does not exceed Rs. 5,000, to remit the whole of the fees leviable in respect of the property,

(*b*) where the said amount or value exceeds Rs 5,000 to remit the whole of the said fees in respect of the first Rs. 5,000 and

(*c*) where any property passes more than once in consequence of such deaths, to remit in the case of second and subsequent succession, the whole of the said fees irrespective of the value or amount of such property. No. 120-F., dated 14-1-1915. Gazette of India, 6-1-1915, Part I, pp 160-161

(19*j*) to remit in the whole of British India the fees chargeable under Article 1 (*a*) and (*b*) of Schedule II of the Act on applications for mutation of names in respect of the property

of any person subject to Military law either under the Army Act (44 and 45 Vict. C. 58) or under the Indian Army Act, 1911 (VIII of 1911) who is killed or dies of wounds inflicted, accident occurring or disease contracted within 12 months, before death, while on active service in the present war No. 371-F, dated 25-2-1915, Gazette of India, dated 27-9-1915, Part I, p 350.

(19*k*) to remit the fees chargeable on applications for the grant of licenses issued in accordance with the provisions of any rule made under section 9 of the Petroleum Act, 1899 (VIII of 1899) for the possession of dangerous petroleum for use on motor vehicles and for its transport thereon for the purpose of use therein. No 134-F, dated 27-9-1916, Gazette of India, dated 30-9-1916, Part I, p 1461

B—Special for the Presidency of Fort St George only

For Revised Notifications by the Governor in Council under the Devolution Act, 1920, see infra

(20) to direct the fees chargeable on the following documents filed in claims preferred under the Madras Hereditary Village Offices Act, 1895 (Madras Act III of 1895), shall be limited to the sum specified below against each, namely —

plaint, petition for execution or memorandum of appeal to a Collector—eight annas,

memorandum of appeal to the Board of Revenue—two rupees:

(21) to remit the fees chargeable (*a*) on copies of judgments, decrees or orders passed on claims preferred under the Madras Hereditary Village Offices Act, 1895, (Madras Act III of 1895), and (*b*) on applications filed by either party in the course of the trial of suits or appeals or in the course of execution of decrees under the said Act,

(22) to remit the fees chargeable under the First Schedule on plaints in summary suits brought before Collectors under Madras Act VIII of 1865 (*An Act to consolidate and improve the laws which define the process to be taken for the recovery of rent*),

(23) to reduce the fees chargeable in suits by Government raiyats, for the recovery of land sold for arrears of revenue, to the amount which would be chargeable if the value of the subject-matter were only the rent of the land payable for the year next before the date of presentation of the plaint;

Clauses (20) and (21) were substituted for the original clauses by Notification No 3449-S R, dated the 6th August, 1897, Gazette of India, 1897, Part I, p 696

(23*a*) to remit the fees chargeable under the said Act on applications made by *toddy-drawers and shop-keepers* for the grant of licenses permitting them or their servants to draw toddy from cocoanut and other palms;

(23*b*) to remit the fees chargeable on all communications made under Chapter II of the Madras Proprietary Estates Village Service Act, 1894 (Madras Act II of 1894) by a proprietor to any Revenue Officer relating to the appointment and control of village officers;

(23*c*) to remit the fees chargeable on certain applications made by cultivators of the hemp plant (*Cannabis Sativa or Indica*) in the Madras Presidency:

* (23*d*) to remit the fees chargeable on application made by distillers and warehouse-keepers in the Madras Presidency *to the Excise Officer in Charge of the distillery or warehouse* for the issue of permit for the transport of country spirit;

(23*e*) to remit the fees chargeable under item 1 (*a*) of Schedule II of the Act on applications for transfer of registry in the revenue accounts in respect of ryotwari holdings in the Madras Presidency, *No 874F, dated 29-8-1913, Gazette of India, dated 29-3-1913, Part I, p 826*

C—Special for Bombay only (vide Reductions and Remissions for Bombay only, infra)

D—Special for Bengal only.

Vide infra Revised Notification under the Devolution Act, superseding clauses (36) to (37*i*).

G—Special for the Punjab only

(42) to remit the fees chargeable on copies of orders or proceedings under section 37 of the Punjab Land-revenue Act, XVII of 1887, made or recorded by Collectors or other Revenue-officers engaged in revising a record-of-rights under a notification published in accordance with section 32 of the said Act:

Provided that the copy is furnished for the purpose of being filed with an application or petition [illegible] Collector or other Revenue-officer engaged as afor[illegible] record-of-rights, or to the Commissio[illegible]

Clause (23a) was inserted by [illegible] o. 15th June 18[illegible], *see* Gazette of Ind[illegible] I, p.
For (23c) *see* Notification No. 2[illegible] Gazette of India, 1901, Part [illegible] 32.
* *See* Notification N[illegible] S. 1 India, 1903, Part I, p [illegible]

Financial Commissioner, Punjab, relating to matters connected with the assessment of land or the ascertainment of rights thereto, or interests therein, if presented previous to the final confirmation of such revision;

(43) to remit the fees chargeable on applications under section 97 of the Punjab Land-revenue Act, XVII of 1887, made by village officers in accordance with the provisions of Rule 83 of the rules under that Act published with the Notification of the Punjab Government, No 76, dated the 1st March, 1888,

(43*a*) to remit in the territories administered by the Lieutenant-Governor of the Punjab the fees chargeable on plaints and suits brought against British subjects by Bhutanis ordinarily residing outside British India.—

(*i*) for the recovery of debts,
(*ii*) appertaining to the custody of a woman, or
(*iii*) appertaining to inheritance,

† (43*b*) to remit in the territories administered by the Lieutenant-Governor of the Punjab, the fees chargeable on copies of all records maintained under the provisions of Chapter IV of the Punjab Land-Revenue Act, 1887 (XVII of 1887), when such copies are exhibited or recorded in any Court of Justice or are received or furnished by any public officer,

(43*c*) to remit the fees chargeable under the Act on applications for the grant of fishing licenses prescribed by the rules made by the Government of the Punjab under section 3 of the Punjab Fisheries Act 1914 (II of 1914)

H —Special for Burma only

* (44) to remit the fees chargeable on the following documents furnished to cultivators, namely —

certified copies of extracts from settlement or supplementary survey registers containing particulars of the holding of cultivators·

* (45) to remit the fees chargeable in Upper Burma on plaints, applications, petitions and copies which are filed, exhibited or recorded in the Court of a Circle Officer, or in any Court presided over by a Thugyi or Myothugyi; or which are received or furnished by a Thugyi or Myothugyi

Explanation.—For the purpose of this clause the expression "Thugyi or Myothugyi" includes any person, however desig-

† For (43b) *see* Notification No 2807-S R, dated 26th June, 1896, Gazette of India, 1896, Part I, p 601

* Clauses 44 and 45 were substituted for clauses 44 to 46 by Notification No 4724-S R, dated the 22nd October, 1897, *see* Gazette of India, 1897, Part I, p 956

nated, who in any part of Upper Burma occupies a position similar to that which is held in other parts by a Thugyi or Myothugyi;

(46) to remit in Lower Burma the fees chargeable on applications presented under section 45 of the Burma Land and Revenue Act (II of 1876), by Revenue-officers with a view to the realisation of arrears of revenue;

*(46a) to remit in all parts of Burma except the Shan States, the fees chargeable under section 35 of the Act on applications presented to officers of land-revenue for the notification errors in the assessment of land revenue,

K—Special for the Bombay Presidency, Bengal, the North-Western Provinces and Oudh, the Punjab, Lower Burma, the Central Provinces, Ajmir and Coorg

* (48) *to direct that whenever, upon payment of the full fee, a certificate of administration has been granted under Act XL of 1858 (An Act for making better provision for the care of the persons and property of Minors in the Presidency of Bengal), or Act XX of 1864 (An Act for making better provision for the care of the person of minors in the Presidency of Bombay), and a fresh certificate is for any reason subsequently granted in respect of the same estate, no fee shall be chargeable upon the fresh certificate so granted*

British Beluchistan

The Governor-General of India in Council has been pleased to extend the remissions and reductions specified in rules 1 to 19 (b) set out above to British Beluchistan by Notification No 3633, I B. of the Government of India, dated 18th Nov. 1913 and published in the Gazette of India, dated the 22nd Nov 1913, Part I, pages 1109 to 1112

For clause (46) *see* Notification No 2213-S R, dated the 22nd May, 1896 Gazette of India, 1896, Part I, p 379

* For clause 46(*a*) see Notification No 4072-S. R, dated the 2nd August, 1902 Clause 48 is obsolete

APPENDIX I.

B

Revised Notifications under S. 35.

(1)

FOR BENGAL ONLY.

No 1872J —The 23rd May 1921 —Under section 35 of the Court Fees Act, 1870 (VII of 1870), as amended by the Devolution Act, 1920 (XXXVIII of 1920), and in superssion of all previous notifications under that section, it is hereby notified that in exercise of the power to reduce or remit in the whole or in any part of the territories under his administration, all or any of the fees mentioned in the First and Second Schedules of the Court Fees Act, 1870 (VII of 1870), the Governor in Council is pleased to make the reductions and remissions hereinafter set forth, namely —

(1) to remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use and on applications for renewal of stamped paper which has become spoiled or unfit for use,

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government,

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded.

(4) to remit the fees chargeable on—

(a) copies of village settlement-records furnished to landholders and cultivators during the currency or at the termination of settlement operations.

(*b*) lists of fields extracted from village settlement-records for the purpose of being filed with petitions o plaint in Settlement Courts:

Provided that nothing in this clause shall apply to copie of judicial proceedings or to copies of village settlement-record (other than lists of fields) extracted as aforesaid, which ma be filed in any Court or office;

(5) to direct that the fee chargeable on appeals from order under section 47 *of the Code of Civil Procedure, 1908* (Act V of 1908) shall be limited to the amounts charageable unde Article 11 of the Second Schedule,

(6) to remit the fees chargeable on security-bonds for th keeping of the peace by, or good behaviour of, persons othe than the executants;

(7) to remit the fee payable under Article 1, clause (*c*) of the second Schedule on an application or petition presente to a Chief Commissioner, when the application or petition is accompanied by a petition to the Government of India and contains merely a request that that petition may be forwarded *to the Government of India*

(8) to remit the fees chargeable under Articles 6, 7 and 9 of the first Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or offices for the private use of persons applying for them;

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer,

(9) *to remit the fees chargeable, under* paragraph 4 of clause (*a*) and paragraph 2 of clause (*b*) of Article 1 of the second Schedule, on applications for orders for the payment of deposits in cases in which the deposit does not exceed Rs 25 in amount:

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the applications;

(10) to remit, with reference to clause (xi) of section 19 *of the Act, the fees chargeable on applications for leave to* occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land:

(11) to remit the fees chargeable on applications for loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884);

(12) to remit the fee chargeable on an application made a person to the Collector under sub-section (2) of section 42 the Indian Stamp Act, 1899 (II of 1899), for the return that person, or the Registration Officer who impounded it, a document impounded and sent to the Collector by a Registration Officer

(13) to remit the fees chargeable on the following documents, namely,—

(*a*) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1898 (Act V of 1898), or of a translation thereof, when the copy is given to an accused person,

(*b*) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person,

(*c*) copy or translation of a judgment in a case other than a summons case, and copy of the heads of the Judge's charge to the jury, when the copy or translation is given under section 371 of the said Code to an accused person,

(*d*) copy or translation of the judgment in a summons case, when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail,

(*e*) copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, or to the person to whom the allowance is to be paid,

(*f*) *copy furnished to any person affected by a judgment* or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which, on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment,

(*g*) copies of all documents furnished under the orders of any Court or Magistrate to any Government advocate or pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court,

(*h*) copies of all documents which any such advocate, pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising t Government in connection with any Criminal p ceedings,

(*i*) copies of judgments or deposition required by offic of the Police Department in the course of th duties;

(14) to remit the fee chargeable on an application to Collector with respect either to liability to assessment, or to t amount or rate of an assessment or for a refund of income-t under the Indian Income-tax Act, 1918 (VII of 1918);

(15) to remit the fee chargeable on an application present by any person for the return of a document filed by him any Court or public office;

(16) to direct that, when a part of an estate paying annu revenue to the Government under a settlement which is n permanent is recorded in the Collector's register as separate assessed with such revenue, the value of the subject-matter a suit for the possession of, or to enforce a right of pre-emptic in respect of, a fractional share of that part shall, for the pu poses of the computation of the amount of the fee chargeab in the suit, be deemed not to exceed five times such portion the revenue separately assessed on that part as may be rateab payable in respect of the share;

(17) to direct that, if the amount of the fee chargeable i any case involves a fraction of an anna, the fraction shall t remitted, except where otherwise expressly provided by th notification;

(18) *to remit the fee chargeable on* *an application* for th grant of a licence for the vend of stamp;

(19) to direct that no court-fee shall be charged on a application for the repayment of a fine or of any portion of fine the refund of which has been ordered by compete authority;

(20) to remit the fees chargeable on applications for cop of documents detailed in clauses 3 and 13 *supra*

(21) to remit the duty chargeable in respect of Ind Probates, Letters of Administration or Succession Certificat on the share or other interest of a deceased member of a co pany formed under the Indian Companies Act, 1913 (VII c 1913), provided that the said share or interest was register in a branch register kept in the United Kingdom in accordar

with the provisions of sections 41 and 42 of the said Act (VII of 1913), and that such member was at the date of his decease domiciled elsewhere than in India;

(2) to remit the fees chargeable on applications presented to officers of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed;

(23) to remit the fee chargeable on applications and petitions presented to a Collector or any Revenue officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agriculture Department of the Province,

(24) (a) to remit the fees payable under Schedule II upon applications for the grant or renewal of licenses or duplicates under the Indian Arms Rules, 1920, in respect of which a fee is payable under those Rules, and

(b) to reduce to one anna all fees exceeding one anna payable under Schedule II upon other applications relating to licenses or duplicates granted or renewed under the said rules;

(25) to remit the fees chargeable on applications for the grant of licenses of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules, 1914, to possess gun powder, other explosives or detonators required *bona fide* for blasting purposes;

(26) to remit as follows the fees leviable under Arts 11 and 12 of the first Schedule on the property (i) of any person subject to the Naval Discipline Act (29 & 30 Vict c. 109), the Army Act (44 & 45 Vict c. 58), or the Air Force Act (7 and 8 Geo 5, c 51) or under the Indian Army Act, 1911 (VIII of 1911) who is killed while on active service or on service which is of a warlike nature or involves the same risk as active service or dies from wounds inflicted, accidents occurring, or diseases contracted while on such service, and (ii) any person being a Government servant civil or military, who dies from wounds or injuries intentionally inflicted while in actual performance of his official duties or in consequence of those duties.

(a) where the amount of or value of property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under the Succession Certificate Act, 1889, does not exceed Rs. 50,000 to remit the whole of of the fees leviable in respect of the property.

(b) where the said amount or value exceeds Rs. 5[illegible] to remit the whole of the said fees in resp[illegible] the first Rs. 50,[illegible]; and

(*c*) where any property passes more than once in consequence of such deaths to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property;

(*d*) the whole of the fees chargeable on applications for mutations of names in respect of property of persons mentioned above (14-5-31).

(27) to remit the fees chargeable on applications for mutations of names in respect of property of any person subject to military law either under the Army Act (44 and 45 Vict. c 58) or under the Indian Army Act, 1911 (VIII of 1911) who is killed, or dies of wounds inflicted, accident occurring or disease contracted within twelve months before death while on active service in the present war.

(28) to remit the fees charageable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists Loans Act, 1884 (XII of 1884)

(29) to remit the fees chargeable on applications for the grant of licenses issued in accordance with the provisions of any rule made under section 9 of the Indian Petroleum Act, 1899 (VIII of 1899), for the possession of dangerous petroleum for the use on Motor Vehicles and for its transport thereon for the purposes of use therein.

(30) to remit the fees chargeable on copies of views of Civil or Revenue Court situate in the territories of His Highness the Gaekwar of Baroda forwarded to any Court in British India for execution in pursuance of the provisions of section 44 of the Code of Civil Procedure, 1908 (V of 1908).

(31) to remit in the Hill Tracts of Chittagong all the fees mentioned in the first and second Schedule:

(32) to declare that the proper court-fees to be charged upon an application to deposit in any Court, but not exceeding the sum of fifteen rupees, shall be as follows:

	Proper fee.
If the amount deposited does not exceed Rs 2-8-0	One Anna
If the amount deposited exceeds Rs. 2-8-0 but does not exceed Rs. 5 . . .	Two Annas
If the amount deposited exceeds Rs. 5 but does not exceed Rs. 10 . . .	Four Annas
If the amount deposited exceeds Rs. 10 but does not exceed Rs 15 . . .	Six Annas

Provided that no fee shall be chargeable on an application to deposit rent in respect of which a fee is chargeable under any

rule framed under sub-section (2) of section 61 of the Bengal Tenancy Act, 1885 (VIII of 1885).

(33) to remit the fees chargeable on applications by ryots in the Rajshahi district for licenses to cultivate the hemp plant

(34) to remit the fees chargeable on applications or petitions of objections referring to any entry made or proposed to be made in a draft record of rights prepared under Chapter X of the Bengal Tenancy Act, 1885 (VIII of 1885), provided that such applications or petitions are presented before the publication of such draft record under section 103A, sub-section (1) of the said Act,

(35) to remit the fees chargeable on certified copies of entries in record of rights furnished in accordance with any rules for the time being in force under the Bengal Tenancy Act, 1885 *(VIII of 1885), after the final publication of such record* of rights under sections 103A (2) of that Act,

(36) to remit the fees chargeable on applications for mutations of names in all Government Estates,

(7) to remit the fees chargeable on copies of documents *furnished by a District Magistrate to a pleader appointed by* the Court to defend a pauper accused of murder,

(38) to remit the fees chargeable under clause (iii) of Art. 17 of Schedule II of the Act on plaints relating to suits instituted under section 106 of the Bengal Tenancy Act, 1885 (VIII of 1885), *to the amount of an ad valorem fee* chargeable under Article 1 of Schedule I of the Act, in cases when the amount of such fee would be less than Rs. 20 (as amended by No 3789-L R, dated 3-4-22)

(39) to reduce to the sum of eight annas the court-fees in excess of twelve annas chargeable on certified copies of entries in a record of rights of a village or a portion thereof maintained under the Bengal Tenancy Act, 1885 (VIII of 1885), (as amended)

(40) to remit in the Presidency of Bengal the fee leviable under item 1 of the second Schedule to the said Act in the matter of applications made to customs officers by all consular officers for the free entry of goods in pursuance of their official functions (7-11-28).

(41) to remit in the Presidency of Bengal the fees mentioned in the first Schedule to the said Act chargeable in respect of copies of documents required by *public officers for filing* before Civil Courts in suits in which the Government is a party. (31-3-29).

(42) to remit the fee chargeable under the Court Fees Act, on applications of sole landlords or their agents or of common agents of *joint landlords* for payment of the transfer fee,

defined in Rule 24 of the rules under the Bengal Tenancy A 1885 (VIII of 1885), published under Notification No 54 L R, dated the 26th March, 1929 at pages 549-592, Part I of Calcutta Gazette of 28th idem, which is payable to them accordance with the provisions of that Act. (15-11-1930).

(43) to remit the fee on applications under item 1 of second schedule made to customs officers by the consular offic for the free entry of goods in pursuance of their official functio

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APPENDIX I.

C

REDUCTIONS AND REMISSIONS

Under section 35 of the Court Fees Act as amended by t Devolution Act, by

Bihar and Orissa Government.

No. $\frac{2576}{L\ A\ 25}$ Under section 35 of the Court Fees Act, 18 (VII of 1870), as amended by Act XXXVIII of 1920 and supersession of all previous notifications under the section, it hereby notified that, in exercise of the power to reduce or rem in Bihar and Orissa all or any of the fees mentioned in the Fi and Second Schedules to the said Act, the Government of Bih and Orissa have been pleased to make the reductions and remi sions hereinafter set forth, namely:—

(1) To remit the fees chargeable on applications present to a Collector for refund of the amount paid to the Governme for stamped paper which has become spoiled or unfit for us or is no longer required for use and on applications for renew of stamped paper which has become spoiled or unfit for use;

(2) to remit the fees chargeable on applications in writir realting exclusively to the purchase of salt which is the propert of the Government

(3) to direct that, when a plaint disclosing a reasonable ca on the merits is presented to any Civil or Revenue Court i such a form that the presiding judge or officer, without sum moning the defandant, rejects it not for any substantial defe but on account of *an entirely technical error in form only*, ar so as to leave the plaintiff free to prosecute precisely the sar case in another form against the same defendant or defendant the value of the stamp on the plaint shall be refunded on pre sentation of an application to the Collector of the district i which the Court is situated, together, with a certificate fro the Judge or officer who rejected the plaint that it was rejecte

under the circumstances above described and that the value of the stamp should, in his opinion, be refunded,

(4) to remit the fees chargeable on —

(a) copies of village settlement-records furnished to landholders and cultivators during the currency or at the termination of settlement operations,

(b) lists of fields extracted from village settlement records for the purpose of being filed with petitions of plaint in Settlement Courts

Provided that nothing in this clause shall apply to copies f judicial proceedings, or to copies of village settlement records other than lists of fields) extracted as aforesaid which may be led in any Court or office,

(5) to direct that the fees chargeable on appeals from orders nder *section 47 of the Code of Civil Procedure, 1908 (Act V* f 1908) shall be limited to the amounts chargeable under Article 1 of the Second Schedule,

(6) to remit the fees chargeable on security-bonds for the eeping of the peace by, or good behaviour of persons other han the executants,

(7) to remit the fees chargeable under Articles 6, 7 and 9 f the First Schedule on copies furnished by Civil or Criminal ourts or Revenue Courts or offices for the private use of persons pplying for them

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or eceived by any public officer;

(8) to remit the fees chargeable, under paragraph 4 of clause (a) and paragraph 2 of clause (b) of Article 1 of the Second Schedule, on applications for orders for the payment of deposits in cases in which the deposit does not exceed Rs 25 in amount:

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application;

(9) to remit, with reference to clause (xi) of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently when made by persons who do not at the time of application hold the land;

(10) to remit the fees chargeable on applications for loans under the *Land Improvement* Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884);

(11) to remit the fee chargeable on an application .

by a person to the Collector under sub-section 2 of section of the Indian Stamp Act, 1899 (II of 1899) for the returr that person, or to the Registration officer who impounded of a document impounded and sent to the Collector by a Re tration Officer;

(12) to remit the fee chargeable on an application m for transfer of a stock-note from one circle to another un paragraph 6 of Resolution No 2566, dated the 20th Aug 1885,

(13) to remit the fees chargeable on the following do ments, namely:—

(a) copy of a charge framed under section 210 of Code of Criminal Procedure, 1908 (V of 1898), of a translation thereof when the copy is given an accused person,

(b) copy of the evidence of supplementary witnesses af commitment when the copy is given under sect 219 of the said Code to an accused person,

(c) copy or translation of a judgment in a case ot than a summons case, and copy of the heads the Judge's charge to the jury, when the copy translation is given under section 371 of the s Code to an accused person,

(d) copy or translation of the judgment in a summ case, when the accused person to whom the co or translation is given under section 371 of t said Code is in jail,

(e) copy of an order of maintenance when the copy given under section 490 of the said Code to t person in whose favour the order is made, or the person to whom the allowance is to be paid,

(f) copy furnished to any person affected by a judgme or order passed by a Criminal Court, of t Judge's charge to the jury or of any order, depo tion or other part of the record, when the co is not a copy which may be granted under a of the preceding sub-clauses without the payme of a fee, but is a copy which, on its being appli for under section 548 of the said Code, the Jud or Magistrate, for some special reason to recorded by him on the copy, thinks fit to furni without such payment,

(g) copies of all documents furnished under the orde of any Court or Magistrate to any Governme Advocate or Pleader or other person special

empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court,

(h) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate or may consider necessary for the purpose of advising the Government in connection with any Criminal proceedings,

(i) copies of judgments or depositions required by officers of the Police Department in the course of their duties

(14) to direct that the fee chargeable on an application to a Collector with respect either to liability to assessment, or to the amount or rate of an assessment under the Indian Income-tax Act, 1918 (VII of 1918), shall be limited to one anna,

(15) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or Public Office,

(16) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by the notification,

(17) to remit the fee chargeable on an application for the grant of a license for the vend of stamp,

(18) to direct that no court-fee shall be charged on an application for the repayment of a fine or any portion of a fine the refund of which has been ordered by competent authority;

(19) to remit the fees chargeable on application for copies of documents detailed in clauses 4 and 13, *supra;*

(20) to remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificate on the share or other interest of a deceased member of a Company formed under the Indian Companies Act, 1913 (VII of 1913), provided that the said share or interest was registered in a branch register in the United Kingdom under the Indian Companies (Branch Register) Act, 1900 (IV of 1900) and that such member was at the date of his decease domiciled elsewhere than in India,

(21) to remit the fees chargeable on applications presented to Officers of Land Revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed;

(22) to remit the fee chargeable on applications and petitions presented to a Collector or any Revenue Officer havi

jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province;

(23) to remit the fees payable under Schedule II upon applications for the grant or renewal of licences or duplicates granted or renewed under the said rules;

(24) to remit the fees chargeable on applications for the grant of licenses of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules, 1914, to possess gun-powder, other explosives or detonators required *bona fide* for blasting purposes,

(25) to remit as follows the fees on the property of any person subject to military law either under the Army Act (44 and 45 Victoria C 58), or under the Indian Army Act, 1911 (VIII of 1911), who was killed or died of wounds inflicted, accident occurring or diseases contracted within three years before death while on active service in the war terminating on the 31st of August, 1921 —

(*a*) where the amount or value of property in respect of which the grant of Probate or Letters of Administration is made or which is specified in the certificate under the Succession Certificate Act, 1889, *does not exceed* Rs 50,000 *to* remit the whole of the fees leviable in respect of that property,

(*b*) where the said amount or value exceeds Rs 50,000 to remit the whole of the said fees in respect of the first Rs 50,000 and

(*c*) where any property passes more than once in consequence of such deaths to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property;

(26) to remit the fees leviable under Articles 11, 12 and 12 (*a*) of the First Schedule of the said Act, on the property of—

(i) any person subject to the Naval Discipline Act (29 and 30 Vict. c. 109), the Army Act (44 and 45 Vict c. 58), the Air Force Act (7 and 8 Geo 5, c. 51) or the Indian Army Act, 1911 (VIII of 1911), who is killed or dies from wounds inflicted, accidents occurring or diseases contracted while on active service or on service which is of a warlike nature or involves the same risk as active service, and

(ii) any person being a Government servant, civil or military, who dies from wound inflicted *while* in actual performance of his official duties in consequence of those duties,

(a) where the amount or value of property, in respect of which the grant of probate or letters of administration is made, or which is specified in the certificate under Part X of the Indian Succession Act, 1925, or in the certificate in the Bombay Regulation No 8 of 1827, does not exceed Rs 50,000, the whole of the fees leviable in respect of that property,

(b) where the said amount or value exceeds Rs 50,000 *the whole of the said fees in respect of the first* Rs 50,000

(27) *to remit the fees chargeable on applications presented* to Officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883) or the Agriculturists' Loans Act, 1884 (XII of 1884)

(28) to remit the fees chargeable on applications for the grant of licenses issued in accordance with the provisions of any rule made under section 9 of the Indian Petroleum Act, 1899, (VIII of 1899) for the possession of dangerous petroleum for use on motor vehicle and for its transport thereon for the purpose of use therein,

(29) to remit the fees chargeable on copies of decrees of Civil or Revenue Courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any Court in Bihar and Orissa for execution in pursuance of the provisions of section 44 of the Civil Procedure Code, 1908 (V of 1908);

(30) to reduce the fee chargeable on application for the settlement of fair rents under section 85 of the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908) to the sum of eight annas for each tenant making or joining or joint in the application, a group of joint owners of tenancy being treated for the purpose of this clause as a single tenant;

(31) to remit the fees chargeable on certified copies of entries in the record-of-rights furnished in accordance with any rules for the time being in force under the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908) after the final publication of such record-of-rights under section 83 (2) of that Act,

(32) to remit the fees chargeable on application or petition of objection referring to any entry made or proposed to be made in—

(a) a draft record-of-rights prepared under Chapter XII of the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908),

(b) a draft record of prædial conditions prepared unde section 107 of that Act,

(*c*) a draft statement prepared or a tenant's khatian written up under section 111 of the same Act,

(*d*) a draft record of landlord's privileged lands, prepared under Chapter XIV of the same Act,

(*e*) a draft record-of-rights and obligations prepared under Chapter XV of the same Act:

Provided that such applications or petitions are presented—

(*i*) in the case of the documents referred to in clause (*a*), (*d*) and (*e*) before the publication of the draft under sub-section (1) of section 83 of the said Act

(*ii*) in the case of the documents referred to in clause (*b*) before the publication of the draft under sub-section (i) of section 108 of the said Act, and

(*iii*) in the case of the documents referred to in clause (*c*) before the publication of the draft under clause of section 111 of the said Act

(33) *to reduce to the sum of eight annas the court-fees in* excess of eight annas chargeable on certified copies of entries in a record-of-rights of a village or a portion thereof maintained under the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908)

(34) to reduce the fees chargeable under clause (*iii*) of Article 17 of Schedule II of the Act on plaints relating to suits instituted in the Chota Nagpur Division under sections 87 (1) 111 (8), 120 (read with section 87), 130 (1) and 252 (*i*) of the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908) *to the amount of ad valorem fee in cases where the amount of such* fee would be less than 15 rupees,

(34) to remit the fees chargeable—

(*a*) on certified copies of entries in record-of-rights furnished in accordance with any rules for the time being in force, under the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913), after the final publication of such record-of-rights under section 116 (2) of that Act,

(*b*) on any application for the deposit of rent in respect of which a fee is paid under section *70 (2) of the* Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913),

(*c*) on applications or petitions of objection referring to any entry made or proposed to be made in a draft record-of-rights prepared under Chapter XI of the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913); provided that such applications or petitions are presented before the publication of

such draft record under section 116 (*i*) of the said Act

(36) to reduce the fees chargeable under clause (*iii*) of Article 17 of Schedule II of the Act on plaints relating to suits instituted under section 130 of the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913) to the amount of an *ad valorem* fee chargeable under Article I, Schedule I of the Act in cases where the amount of such fee would be less than Rs 15

(37) to reduce to the sum of eight annas the fees in excess of eight annas chargeable on certified copies of entries in a record-of-rights of a village or a portion thereof maintained under the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913),

(38) to declare that the proper fee to be charged upon an application to deposit in any Court, rent not exceeding the sum of fifteen rupees, shall be as follows.—

	Proper fee.
If the amount deposited does not exceed Rs 2-8	One anna
If the amount deposited exceeds Rs. 2-8 but does not exceed Rs 5	Two annas.
If the amount deposited exceeds Rs. 5 but does not exceed Rs 10 . . .	Four annas.
If the amount deposited exceeds Rs 10 but does not exceed Rs 15	Six annas.

Provided that no fee shall be chargeable on an application *to deposit rent in respect of which a fee is chargeable under* rules framed under sub-section (2) of section 61 of the Bengal Tenancy Act, 1885 (VIII of 1885);

(39) to remit the fees chargeable on applications or petitions of objection referring to any entry made or proposed to be made in a draft record-of-rights prepared under Chapter 10 of the Bengal Tenancy Act, 1898 (Bengal Act, III of 1898), *provided* that such *applications* or *petitions* are *presented before* the publication of such draft record under section 193A, sub-section (1) of the said Act,

(40) to remit the fees chargeable on certified copies of rules for the time being in force under the Bengal Tenancy Act, 1885 (VIII of 1885) after the final publication of such record-of-rights under section 103A (2) of that Act;

(41) to remit the fees chargeable on copies of documents furnished by a District Magistrate to a pleader of the Court to defend a pauper accused of murder;

(42) to reduce the fees chargeable under clause (*iii*) of Article 17 of Schedule II of the Act on plaints relating to sui instituted under section 106 of the Bengal Tenancy Act, 1[?]

(VIII of 1885), to the amount of an *ad valorem* fee chargeable under Article I of Schedule I of the Act, in cases where the amount of such fee would be less than Rs 15;

(43) to reduce to the sum of eight annas the court-fees in excess of eight annas chargeable on certified copies of entries in a record-of-rights of a village or a portion thereof maintained under the Bengal Tenancy Act, 1885 (VIII of 1885);

(44) to direct that when a record-of-rights is being prepared under Chapter X of the Bengal Tenancy Act, 1885, in pursuance of an order made otherwise than under section 101, clause (*d*) of the latter Act, and any application is made under section 104, sub-section (2) of that Act for a settlement of rent the fee payable on such application shall not exceed the sum of eight annas for each tenant making or joined in such application,

(45) to remit the fees chargeable on an application made to a Magistrate under the Indian Motor Vehicles Act, 1914 (VIII of 1914), for the registration of a Motor Vehicle and for a license to drive it;

46) to remit the fees chargeable on applications made to a Collector for exemption, refund or abatement of income-tax or super-tax under the Indian Income-tax Act, 1918 (VII of 1918) or Supertax Act, 1920 (XIX of 1920)

APPENDIX I.

D

Reductions and Remissions of court-fees in the Bombay Presidency.

The Government of Bombay Notification No. 590, dated 16th September 1921. Published in the Bombay Government Gazette, dated 22nd September 1921.

Secretariat, Fort, Bombay, 16th September 1921.

No 590.—In exercise of the powers conferred by section 35 of the Court Fees Act, 1870 (VII of 1870), as amended by Act XXXVIII of 1920, and in supersession of so much of all previous notifications under that section issued by the Governor-General-in-Council as relates to the reduction or remission of all or any of the fees mentioned in the First and Second Schedules to the said Act, in the territories under the administration of the Government of Bombay, the Governor in Council is pleased to make the following reductions and remissions of the fees

mentioned in the First and Second Schedules to the said Act, namely:—

(1) To remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use and on applications for renewal of stamped paper which has become spoiled or unfit for use,

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government,

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded;

(4) to remit the fees chargeable on—

(a) copies of village settlement-records furnished to landholders and cultivators during the currency or at the termination of settlement operations,

(b) lists of fields extracted from village settlement-records for the purpose of being filed with petitions of plaint in Settlement Courts:

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement-records (other than lists of fields) extracted as aforesaid, which may be filed in any Court or Office,

(5) to direct that the fee chargeable on appeals from orders under section 47 of the Code of Civil Procedure, 1908 (V of 1908), shall be limited to the amounts chargeable under Article 11 of the Second Schedule;

(6) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants;

(7) to remit the fees chargeable under Articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal

(*VIII of 1885*), *to the amount of an ad valorem fee* chargeable under Article I of Schedule I of the Act, in cases where the amount of such fee would be less than Rs 15;

(43) to reduce to the sum of eight annas the court-fees in excess of eight annas chargeable on certified copies of entries in a record-of-rights of a village or a portion thereof maintained under the Bengal Tenancy Act, 1885 (VIII of 1885);

(44) to direct that when a record-of-rights is being prepared under Chapter X of the Bengal Tenancy Act, 1885, in pursuance of an order made otherwise than under section 101, clause (*d*) of the latter Act, and any application is made under section 104, sub-section (2) of that Act for a settlement of rent the fee payable on such application shall not exceed the sum of eight annas for each tenant making or joined in such application,

(45) to remit the fees chargeable on an application made to a Magistrate under the Indian Motor Vehicles Act, 1914 (VIII of 1914), for the registration of a Motor Vehicle and for a license to drive it;

46) to remit the fees chargeable on applications made to a Collector for exemption, refund or abatement of income-tax or super-tax under the Indian Income-tax Act, 1918 (VII of 1918) or Supertax Act, 1920 (XIX of 1920)

APPENDIX I.

D

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Secretariat, Fort, Bombay, 16th September 1921.

No 590—In exercise of the powers conferred by section 35 of the Court Fees Act, 1870 (VII of 1870), as amended by Act XXXVIII of 1920, and in supersession of so much of all previous notifications under that section issued by the Governor-General-in-Council as relates to the reduction or remission of all or any of the fees mentioned in the First and Second Schedules to the said Act, in the territories under the administration of the Government of Bombay, the Governor in Council is pleased to make the following reductions and remissions of the fees

mentioned in the First and Second Schedules to the said Act, namely:—

(1) To remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use and on applications for renewal of stamped paper which has become spoiled or unfit for use,

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government,

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded;

(4) to remit the fees chargeable on—

(*a*) copies of village settlement-records furnished to land-holders and cultivators during the currency or at the termination of settlement operations,

(*b*) lists of fields extracted from village settlement-records for the purpose of being filed with petitions of plaint in Settlement Courts:

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement-records (other than lists of fields) extracted as aforesaid, which may be filed in any Court or Office,

(5) to direct that the fee chargeable on appeals from orders under section 47 of the Code of Civil Procedure, 1908 (V of 1908), shall be limited to the amounts chargeable under Article 11 of the Second Schedule;

(6) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants;

(7) to remit the fees chargeable under Articles 9 of the First Schedule on copies furnished by Civ

Courts or Revenue Courts or Officers for the private use of persons applying for them:

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer;

(8) to remit the fees chargeable, under paragraph 4 of clause (*a*) and paragraph 2 of clause (*b*) of Article 1 of the Second Schedule, on applications for orders for the payment of deposits in cases in which the deposit does not exceed Rs. 25 in amount:

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application,

(9) to remit, with reference to clause (xi) of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land;

(10) to remit the fees chargeable on application for loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884);

(11) to remit the fee chargeable on an application made by a person to the Collector under sub-section 2 of section 42 of the Indian Stamp Act, 1899 (II of 1899), for the return to that person, or to the Registration Officer who impounded it, of a document impounded and sent to the Collector by a Registration Officer;

(12) to remit the fees chargeable on the following documents, namely.—

(*a*) copy of a charge framed under section 210 of the *Code of Criminal Procedure, 1898* (V of 1898), or of a translation thereof, when the copy is given to an accused person,

(*b*) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person,

(*c*) copy of a translation of a judgment in a case other than a summons case, and copy of the heads of the Judge's charge to the jury, when the copy of translation is given under section 371 of the said Code to an accused person,

(*d*) copy or translation of the judgment in a summons case, when the accused person to whom the copy or translation is given under section 371 of the *said Code is in jail*,

(e) copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid,

(f) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which, on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment,

(g) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court;

(h) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings;

(i) copies of judgments or deposition required by officers of the Police Department in the course of their duties,

(13) to remit the fee chargeable on an application to a Collector, with respect either to liability to assessment or to the amount or rate of an assessment or for a refund of income-tax under the Indian Income-tax Act, 1918 (VII of 1918);

(14) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office;

(15) to direct that, when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional share of that part shall, for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion

the revenue separately assessed on that part as may be rateal payable in respect of the share;

(16) to direct that, if the amount of the fee chargeable any case involves a fraction of an anna, the fraction shall remitted, except where otherwise expressly provided by th notification,

(17) to remit the fee chargeable on an application for t grant of a license for the vend of stamp;

(18) to direct that no court-fee shall be charged on application for the repayment of a fine or of any portion of fine the refund of which has been ordered by compete authority;

(19) to remit the fees chargeable on applications for copi of documents detailed in clauses 4 and 13, *supra*

(20) to remit the duty chargeable in respect of Indian Pro bates, Letters of Administration or Succession Certificates o the share or other interest of a deceased member of a compan formed under the Indian Companies Act, 1913 (VII of 1913) provided that the said share or interest was registered in Branch Register in the United Kingdom under the Indian Com panies (Branch Registers) Act, 1900 (IV of 1900), and tha such member was at the date of his decease domiciled elsewher than in India;

(21) to remit the fees chargeable on applications presente to officers of land revenue for the suspension or remission o revenue on the ground that a crop has not been sown or ha failed;

(22) to remit the fee chargeable on applications and peti tions presented to a Collector or any Revenue Officer having jurisdiction equal or subordinate to a Collector for advice o assistance from the Agricultural Department of the Province;

(23) (*a*) to remit the fees payable under Schedule II upon applications for the grant or renewal of licenses or duplicates under the Indian Arms Rules, 1924 in respect of which a fee is payable under those Rules, and

(*b*) to reduce to one anna all fees exceeding one anna payable under Schedule II upon other applications relating to licenses or duplicates granted or renew ed under the said rules;

(24) to remit the fees chargeable on applications for the grant of licenses of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules, 1914, to possess gun-powder, other explosives or detonators required *bona fide* for blasting purposes;

(25) to remit as follows the fees on the property of any person subject to military law either under the Army Act (44 and 45 Vict C 58) or under the Indian Army Act, 1911 (VIII of 1911), who is killed or dies of wounds inflicted, accident occurring or diseases contracted within three years before death while on active service in the present war —

(a) where the amount of or value of property in respect of which the Grant of Probate or Letters of Administration is made or which is specified in the certificate under the Succession Certificate Act, 1889, or in the certificate under Bombay Regulation No 8 of 1827, does not exceed Rs 50,000 to remit the whole of the fees leviable in respect of that property,

(b) where the said amount or value exceeds Rs 50,000 to remit the whole of the said fees in respect of the first Rs 50,000, and

(c) where any property passes more than once in consequence of such deaths to remit, in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property;

(26) to remit the fees chargeable on applications for mutations of names in respect of the property of any person subject to military law either under the Army Act (44) and 45 Vict., C 58) or under the Indian Army Act, 1911 (VIII of 1911), who is killed or dies of wounds inflicted, accident occurring or disease contracted within twelve months before death while on active service in the present war,

(27) to remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884);

(28) to remit the fees chargeable on applications for the grant of licenses issued in accordance with the provisions of any rule made under section 9 of the Indian Petrolium Act, 1899 (VIII of 1899), for the possession of dangerous petrolium for use on motor vehicles and for its transport thereon for the purpose of use therein;

(29) to remit the fees chargeable on copies of decrees of Civil or Revenue Courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any Court in British India for execution in pursuance of the provisions of section 44 of the Civil Procedure Code, 1908 (V of 1908);

(30) to remit the fees chargeable under the second Sch

on agreements required by Rules 37, 43 and 52 of the Land Revenue Code Rules, 1921;

(31) to reduce to a uniform rate of four annas per copy the fee chargeable under Article 7 of the first Schedule on copies of decrees or orders having the force of a decree issued by Mamlatdars under the Mamlatdars' Courts Act, 1906 (Bom. Act II of 1906),

(32) to remit the fees chargeable under Article 1 of the second Schedule on all applications made to a Collector or other Revenue Officer, or to the Chief Controlling Revenue Authority, by any of the under-mentioned political pensioners, being the eldest sons or representatives of the *ex*-Amirs of Sindh and Sardars of note.—

District	Number and Names of Pensioners
Hyderabad .	(1) His Highness Mir Nur Muhammad Khan, son of Mir Hussain Ali Khan, Talpur,
Thar Parkar . .	(2) His Highness Mir Fateh Khan, son of Mir Sher Mahomed Khan, Talpur.
Sukkur . .	(3) Mir Fazl Hussain Khan, son of Mir Sohrab Khan, Talpur;

(33) to remit the fees chargeable in respect of the documents specified in the first or second Schedule in the case of suits instituted before village-munsiffs under Chapter V of the Dekkan Agriculturistss' Relief Act, 1879 (XVII of 1879),

(34) to remit the fees chargeable on copies of documents furnished by a Court of Session or the High Court, or by the Sadar Court in Sind, to a pleader appointed by the Court to defend a person accused of murder;

(35) to remit the fees chargeable under Article 1, clauses (*b*) and (*c*) of Schedule II on applications made to a Collector, or other Revenue Officer, or to any Chief Controlling Revenue or Executive Authority, for permission to cut and remove jungle wood for fuel, or thorns for fencing, from lands which are unalienated and unoccupied within the meaning of the Bombay Land Revenue Code, 1879;

(36) to remit the fees chargeable on certified copies on applications for certified copies of entries in record-of-rights *maintained under the Bombay Land Revenue Code*, 1879 (Bom. Act V of 1879), and on application for such copies when required for filing in Court under section 135-H of the Act;

(37) to remit the fees chargeable on certified copies of extracts from entries in record-of-rights maintained under the

Bombay Land Revenue Code, 1879 (Bom Act V of 1879), when such copies are attached to applications for the execution of Civil Court decrees,

(38) to remit the fees chargeable (*i*) on applications made to the excise officer-in-charge of the distillery or warehouse for the transport of country spirits, (*ii*) on applications made by the licensees of intoxicating drug shops for transport permits of duty-paid drugs,

(39) to remit the fees chargeable on applications made by the licensees of opium shops or by farmers of the monopoly districts for transport permits,

(40) to remit the fees chargeable on applications for the grant of licenses of tap toddy trees for domestic consumption in the Panch Mahals District;

(41) to remit the fees chargeable on applications made to village officers for copies of entries in the record-in-rights registers under section 135-K of the Bombay Land Revenue Code, 1879 (Bom Act V of 1879)

APPENDIX I.

E

BURMA.

REDUCTIONS AND REMISSIONS

Under section 35 of the Court Fees Act

No 41. In exercise of the powers conferred by section 35 of the Court Fees Act, 1870, as amended by the Devolution Act, 1920, and in supersession of the Notifications set for in the Schedule appended hereto, the Local Government is pleased to remit or reduce, as the case may be, in the whole of Burma the fees mentioned in the first and second Schedules of the said Act to the extent detailed below:—

I If the amount of the fee chargeable in any case involves a fraction of an anna, that fraction shall be remitted

I No fee shall be chargeable in respect of the following applications:—

A —*General*

1. Applications requesting that an enclosed petition may be forwarded to the person to whom it is addressed

2 Applications made on behalf of Government by Government officer or servant.

3. Applications for the return of documents filed in any Court or public office.

4 Applications for copies of documents in respect of which copies no court-fee is chargeable

5 Applications for repayment of deposits or payment of any sum of payment of which has been duly sanctioned by competent authority

6 Applications for rectification in errors of assessment.

7 Applications for the advice or assistance of the Agricultural Department.

8 (1) A claim preferred to the revising authority by a person whose name is not entered on the electoral roll for the Council of State, or the Indian Legislative Assembly or the Local Legislative Council and who claims to have it inserted therein

(2) An objection preferred to such authority by any person whose name is on the roll and who objects to the inclusion of his own name or of the name of any other person on this roll

B—*Specific Enactments*

1 *Arms Act*—Applications for the grant or renewal of arms licenses or otherwise relating to such licenses

2 *Explosives Act*—Applications for licenses to possess gun-powder, other explosives or detonators required *bona fide for blasting purposes.*

3. *Government Loans Enactments*—Applications for the grant, suspension or remission of loans under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884

4 *Income-tax Act*—Applications with respect either to liability to assessment or to the amount or rate of an assessment or for a refund of income-tax.

5 *Land Revenue Enactments*—

(*a*) Applications for permission to occupy Government land for purposes of cultivation.

(*b*) Applications for the suspension or remission of land revenue on the ground that a crop has not been shown or has failed;

6. *Petroleum Act.*—Applications for the grant of licenses for the possession of dangerous petroleum for use on motor vehicles and its transport thereon for the purpose of use therein

7. *Salt Act*—Applications to purchase salt belonging to Government.

8 *Stamp and Court Fees Acts*—Applications for—

(*a*) refund of the amount paid to Government for stamped paper which has become spoiled or unfit for use or is no longer required for use;

(*b*) renewal of stamped paper which has become spoiled or unfit for use,

(*c*) return of documents impounded by Collector [Indian Stamp Act, 1899, section 42 (2)],

(*d*) a stamp vendor's license

III. The fee chargeable on appeals from orders under ection 47 of the Code of Civil Procedure, 1908, shall be limited o amounts chargeable under Article II of the second Schedule.

IV No court-fee shall be chargeable upon copies in the ollowing cases.—

(*a*) Copies of proceedings or orders supplied to applicants requiring such copies for their private use only, and not such presented to any public Court or officer

(*b*) Copies of proceedings or orders supplies to Government officers or servants in the course of their duties

(*c*) Copies of documents in connection with any legal proceedings which are required by or for any person duly retained on behalf of or at the expense of Government to assist in such legal proceedings.

(*d*) Copies directed to be furnished free of cost under the Criminal Procedure Code.

(*e*) Copies of decrees of Civil or Revenue Courts situated in the territories of His Highness the Gaekwar of Baroda forwarded to any Court in British India for execution in pursuance of the provisions of section 44 of the Civil Procedure Code, 1908.

(*f*) Copies of entries in settlement and supplementary survey maps and registers relating to land standing in the name of, or actually in the occupation of, the applicant.

V. *Plaints*—(*a*) When a plaint disclosing a reasonable case on the merits is presented to any Civil Court or Revenue Officer in such a form that the Presidency Judge or Officer without summoning the defendant rejects it, not for any substantial defect, but on account of an entirely technical error in form only and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant, t value of the stamp on the plaint shall be refunded on its p tation to the Collector of the district with a certificate fr

Judge or Officer who rejected it that it was rejected in the circumstances above described and that in his opinion the value of the stamp should be refunded.

(*b*) The value of the subject-matter of a suit for the possession of or to enforce a right of pre-emption in a fractional share of a holding assessed separately to land revenue shall, for the purpose of computing the amount of the fees chargeable in the suit, be deemed not to exceed five times such portion of the *the revenue assessed on the holding as may be payable* rateably in respect of the share.

VI *Probates and Letters of Administration*.—(*a*) No fee shall be chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates in the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913, provided that the said share or interest was registered in a branch registered in the United Kingdom under the Indian Companies (Branch Register) Act, 1900, and that such member was at the date of his decease domiciled elsewhere than in India.

(*b*) The fee chargeable under Articles 11, 12 and 12A of the first Schedule on the property :—

(*i*) Any person subject to the Naval Discipline Act (29 and 30 Vict. C 109), the Army Act (7 and 8 Geo 5, C 51), *or the Indian Army Act*, 1911 (VII of 1911), who is killed while on active service or on service which is of a warlike nature or involves the same risk as active service, or dies from wounds inflicted, accidents occurring or disease contracted while on such service and

(*ii*) any person being a Government servant, Civil or Military, who dies from wounds or injuries intentionally inflicted while in actual performance of his official duties or in consequence of those duties, shall be remitted to the following extent:—

(1) where the amount or value of property in respect of which the grant of probate or letters of administration *is* made, or which is specified in the certificate under [Part X of the Indian Sucession Act, 1925] does not exceed Rs 50,000, the whole of the fees leviable in respect of that property;

(2) when the said amount or value exceeds Rs 50,000, the whole of the said fees in respect of the first Rs. 50,000

VII. No fee shall be chargeable in respect of any bond prescribed by the Criminal Procedure Code

APPENDIX I.

F

Reductions and Remissions of court-fees in the Central Provinces.

List of reductions and remissions authorised by the Governor in Council under section 35 of the Court Fees Act, 1870

Dated the 22nd February, 1922, for the Central Provinces.

No 79-292-XI —In exercise of the powers conferred by section 35 of the Court Fees Act, 1870 (VII of 1870), as amended by the Devolution Act, 1920 (XXXVIII of 1920), and in supersession of all previous notifications under the said section, the Governor in Council is pleased to make the following reductions and remissions in the fees chargeable under the first and second Schedules of the Act, namely :—

Note.—*The undermentioned rulings apply to Behar also, see Central Provinces Gazette, Notification No 97-292-XI, dated the 22nd February 1922, for Berar*

(1) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification

(2) to remit the fees charageable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use and on applications for renewal of stamped paper which has become spoiled or unfit for use;

(3) to remit the fees chargeable on applications in writing, relating exclasively to the purchase of salt which is the property of the Government;

(4) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil Court or Revenue Officer in such a form that the presiding Judge or Officer, without summoning the defendant, rejects it not for any substantial defect but on account of an *entirely technical error in form* only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector together with a certificate from the Judge or Officer who rejected the plaint that it was rejected under the circumstances abov described and that the value of the stamp should, in his o[illegible] be refunded;

(5) to remit the fees chargeable on—

(*a*) copies of village settlement-records furnished to land holders and cultivators during the currency or at the termination of Settlement operations.

(*b*) lists of fields extracted from village settlement-records for the purpose of being filed with petitions to Settlement Officers:

Provided that nothing in this clause shall apply to copies of judicial proceedings or to copies of village settlement-records (other than lists of fields) extracted as aforesaid, which may be filed in any court or office,

(6) to direct that the fee chargeable on appeals from orders under section 47 of the Code of Civil Procedure, 1908 (Act V of 1908), shall be limited to the amounts chargeable under Article 11 of the Second Schedule;

(7) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants,

(8) to remit the fee payable under Article I, clause (*c*), of the Second Schedule on an application or petition presented to the Local Government, when the application or petition is accompanied by a petition to the Government of India and contains merely a request that the petition may be forwarded to the Government of India;

(9) to remit the fees chargeable under Articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Officers for the private use of persons applying for them,

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer;

(10) to remit the fees chargeable, under paragraph 4 of clause (*a*) and paragraph 2 of clause (*b*) of Article 1 of the second Schedule on applications for orders for the payment of deposits in cases in which the deposit does not exceed Rs 25 in amount;

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application;

(11) to remit, with reference to clause xi, section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land;

(12) to remit the fees chargeable on applications for loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884),

(13) to remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884);

(14) to remit the fee chargeable on an application made by a person to the Collector under sub-section 2 of section 42 of the Indian Stamp Act 1899 (II of 1899) for the return to that person or to the Registration officer who impounded it, of a document impounded and sent to the Collector by a Registration officer,

(15) to remit the fees chargeable on the following documents, namely:—

(*a*) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1898 (V of 1898), or of a translation thereof, when the copy is given to an accused person,

(*b*) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person,

(*c*) copy or translation of a judgment in a case other than a summons case, and copy the heads of the Judge's charge to the jury, when the copy or translation is given under section 371 of the said Code to an accused person,

(*d*) copy or translation of the judgment in a summons case when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail,

(*e*) copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid,

(*f*) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judges' charge to the jury or any order, deposition or other part of the record when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which, on its being applied for under section 548 of the said Code, the Judge or Magistrate, fo some special reason to be recorded by him on copy, thinks fit to furnish without such pay

(*g*) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court,

(*h*) copies of all documents which any such Advocate, pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings;

(*i*) copies of judgments or depositions required by officers of the Police Department in the course of their duties;

(16) to direct that the fee chargeable on an application to a Collector with respect either to liability to assessment or to the amount or rate of an assessment under the Indian Income Tax Act, 1918 (VII of 1918), shall be limited to one anna;

(17) to remit the fee chargeable on an application to a Collector for exemption, refund or abatement of income-tax under the Indian Income-tax Act, 1918 (VII of 1918);

(18) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office,

(19) to direct that, when a part of an estate paying annual revenue to the Government under a settlement, which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional share of that shall, for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share,

(20) to remit the fee chargeable on an application for the *grant of a license for the vend of stamps;*

(21) to direct that no court-fee shall be charged on an application for the re-payment of a fine or of any portion of a fine the refund of which has been ordered by competent authority;

(22) to remit the fees chargeable on applications for copies of documents detailed in clauses 4 and 13 *supra;*

(23) to remit the duty chargeable in respect of Indian Probates Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913 (VII of 1913), provided that the said share or interest was registered in a branch register in the United Kingdom under the Indian Companies (Branch Registers) Act, 1900 (IV of 1900), and that such member was at the date of his decease domiciled elsewhere than in India,

(24) to remit the fees chargeable on applications presented to officers of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed,

(25) to remit the fee chargeable on applications and petitions presented to a Collector or any revenue officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province;

(26) (*a*) to remit the fees payable under Schedule II upon applications for the grant or renewal of licences or duplicates under the Indian Arms Rules, 1902, in respect of which a fee is payable under those Rules, and

(*b*) to reduce to one anna all fees exceeding one anna payable under Schedule II upon other applications relating to licences or duplicates granted or renewed under the said rules;

(27) to remit the fees chargeable on applications to the grant of licences of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules 1914, to possess gun-powder, other explosives or detonators required *bona fide* for blasting purposes;

(28) to remit as follows the fees on the property of any person subject to military law either under the Army Act (44 and 46 Victoria, C 58) or under the Indian Army Act, 1911 (VIII of 1911), who is killed while on active service or on service which is of a warlike nature or involves the same risk as active service or dies from wounds inflicted, accident occuring or diseases contracted while on such service:—

(*a*) where the amount or value of property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under the Succession Certificate Act, 1889 (VII of 1889), does not exceed Rs 50,000 to remit the whole of the fees leviable in respect of the property,

(b) where the said amount or value exceeds Rs 50,000 to remit the whole of the said fees in respect of the first Rs 50,000; and

(c) where any property passes more than once in consequence of such deaths to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property;

(29) to remit the fees chargeable on applications for mutations of names in respect of the property of any person subject to military law either under the Army Act [44 and 45 Vict, C 58] or under the Indian Army Act, 1911 (VIII of 1911), who is killed, or dies of wounds inflicted, accident occurring or diseases contracted within twelve months before death while on active service in the present war;

(30) to remit the fees chargeable on applications for the grant of licenses issued in accordance with provisions of any rule made under section 9 of the Indian Petroleum Act, 1899 (VII of 1899) for the possession of dangerous petroleum for use on motor vehicles and for its transport thereon for the purpose of use therein;

(31) to remit the fees chargeable on copies of decrees of Civil or Revenue Courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any Court in the Central Provinces for execution in pursuance of the provisions of section 44 of the Civil Procedure Code, 1908 (V of 1908);

(32) to remit the fees chargeable on applications presented to Courts with reference to Rule 2, Order XXI, first Schedule, Code of Civil Procedure, 1908 (Act V of 1908), in relation to awards made in the course of conciliation proceedings held with the sanction of the Local Government;

(33) to remit the fee chargeable on copies of documents furnished by a District Magistrate, a Session Judge or the Registrar of the Judicial Commissioner's Court, to a counsel engaged by Government to appear in defence of a pauper accused.

(34) to remit the fees chargeable on petitions of appeal or revision presented in person or sent by post by dismissed municipal servants in accordance with rules made under section 25 (7) of the Central Provinces Municipalities Act, 1922

(35) to remit the fees chargeable on petitions of appeal or revision presented in person or sent by post by dismissed District Council servants in accordance with rules made under section 79 of the Central Provinces Local Self-Government Act, 1920

APPENDIX I.

G

Reductions and Remissions by Madras Government.

Under Sec 35.

No 358—Under section 35 of the Court Fees Act, 1870 (VII of 1870), as amended by section 4 of Act XXXVIII of 1920 and in supersession of all previous notifications on the subject, it is hereby notified that, in exercise of the power to reduce or remit in the Presidency of Fort St George, all or any of the fees mentioned in the first and second Schedules to the said Act, the Governor in Council has been pleased to make the reductions and remissions hereinafter set forth, namely—

(1) to remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use and on applications for renewal of stamped paper which has become spoiled or unfit for use,

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government,

(3)(*a*) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding judge or officer, without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated, together with a certificate from the Judge or Officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should in his opinion, be refunded;

(*b*) to remit the fees now chargeable under Article 1 (d) (ii) of Schedule II of the Madras Court Fees Amendment Act, 1922 (V of 1922) on applications or petitions presented to the High Court for refund of court-fees paid under a mistake or by misdirection

(4) to remit the fees chargeable on—

(*a*) copies of village settlement records furnished to landholders and cultivators during the currency or at the termination of settlement operations,

(*b*) lists of fields extracted from village settlement records for the purpose of being filed with petitions plaint in settlement courts;

Provided that nothing in this clause shall apply to copie of judicial proceedings, or to copies of village settlement record (other than lists of fields) extracted as aforesaid which may b filed in any Court or office;

(5) to direct that the fee chargeable on appeals from order under section 47 of the Code of Civil Procedure, 1908 (Act V of 1908) shall be limited to the amounts chargeable under Articl 11 of the second Schedule

(6) to remit the fees chargeable on security bonds for th keeping of the peace by, or good behaviour of, persons othe than the executants;

(7) to remit the fees chargeable under Articles 6, 7 and 9 of the first Schedule on copies furnished by Civil or Crimina Courts or Revenue Courts or offices for the private use of person applying for them;

Provided that nothing in this clause shall apply to copie when filed, exhibited or recorded in any Court of justice o received by any public-officer;

(8) to remit the fees chargeable, under paragraph 4 of clause (*a*) and paragraph 2 of clause (*b*) of Article 1 of the second Schedule, on applications for orders for the payment of deposits in cases in which the deposit does not exceed Rs. 25 in amount.

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application,

(9) to remit, with reference to clause (xi) of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently when made by persons who do not at the time of application hold the land;

(10) to remit the fee chargeable on application for loans under the Land Improvement Loans Act, 1883 (XIX of 1883) or the Agriculturists' Loans Act, 1884 (XII of 1884);

(11) to remit the fee chargeable on an application made by a person to the Collector under sub-section (2) of section 42 of the Indian Stamp Act, 1899 (II of 1899) for the return to that person, or to the Registration officer who impounded it, of a document impounded and sent to the Collector by a Registra tion officer;

(12) to remit the fees chargeable on the following docu ments namely:—

(*a*) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1898 (V of 1898), or of translation thereof, when the copy is given to an accused person,

(*b*) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person,

(*c*) copy of translation of a judgment in a case other than a summons case, and copy of the heads of the Judge's charge to the jury, when the copy or translation is given under section 371 of the said Code to an accused person,

(*d*) copy or translation of the judgment in a summons case, when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail,

(*e*) copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid,

(*f*) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which on its being applied for under section 548 of the said Code the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment,

(*g*) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially em-

(*h*) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connexion with any criminal case,

(*i*) copies of judgments or depositions required by officer of the Police Department in the course of their duties;

(13) to remit the fee chargeable on an application
ollector for exemption, refund or abatement of income-t

(14) to remit the fee chargeable on an application present by any person for the return of a document filed by him in a Court or public office;

(15) to direct that, when a part of an estate paying annu revenue to the Government under a settlement which is n permanent is recorded in the Collector's register as separate assessed with such revenue, the value of the subject-matter a suit for the possession of, or to enforce a right of pre-empti in respect of, a fractional share of that part shall, for t purpose of the computation of the amount of the fee chargeab in the suit, be deemed not to exceed five times such portion the revenue separately assessed on that part as may be rateab payable in respect of the share;

(16) to direct that, if the amount of the fee chargeable any case involves a fraction of an anna, the fraction shall remitted, except where otherwise expressly provided by th *notification*;

(17) to remit the fee chargeable on an application for th grant of a license for the vend of stamp;

(18) to direct that no court-fee shall be charged on a application for the payment of a fine or of any portion of fine the refund of which has been ordered by compete authority;

(19) to remit the fees chargeable on application for copi of documents detailed in clauses 4 and 12 *supra;*

(20) to remit the duty chargeable in respect of India Probates, Letters of Administration or Succession Certificat on the share or other interest of a deceased member of a com pany formed under the Indian Companies Act, (VII of 1913) provided that the said share or interest was registered in branch register in the United Kingdom under the Indian Com panies (Branch Registers) Act, 1900 (IV of 1900) and that suc member was at the date of his decease domiciled elsewhere tha in India;

(21) to remit the fees chargeable on applications presente to officers of land revenue for the suspension or remision o revenue on the ground that a crop has not been sown or ha failed;

(22) to remit the fee chargeable on application and peti tions presented to a Collector or any Revenue officer havin jurisdiction equal or subordinate to a Collector for advice o assistance from the Agricultural Department of the province;

(23) (*a*) to remit the fees payable under Schedule II upo applications for the grant or renewal of license o duplicates under the Indian Arms Rules, 1920, i respect of which a fee is payable under those Rules, and

(*b*) to reduce to one anna all fees exceeding one anna payable under Schedule II upon other applications relating to license or duplicates granted or renewed under the said rules

(*c*) to reduce to Rs 15, the fees chargeable under Schedule II on a memorandum of second appeal in a suit of the classes mentioned in Article 17-A or 17-B and instituted in the Court of a District Munsif

(*d*) to remit the fee payable under Article 10 of Schedule II by advocates on memorandum of appearance filed by them when appearing for the accused in criminal cases,

(*e*) to reduce to Rs 15 the fees chargeable under Schedule II on a memorandum of second appeal in a suit of the class mentioned in 17-B and instituted *in a revenue Court*

(*f*) to remit the fees chargeable under Article 10 of Schedule II of the Madras Court Fees (Amendment) Act, 1922 (Madras Act V of 1922), in respect of a vakalatnama, or any paper signed by an Advocate signifying or intimating that he is retained for a party, when presented to a criminal Court for the conduct of any prosecution on behalf of a Municipal Council to which the Madras District Municipalities Act, 1920 (Madras Act V of 1920), applies or on behalf of the Corporation of Madras or Local Board to which the Madras Local Boards Act (Madras Act XIV of 1920) applies,

(24) to remit the fees chargeable on applications for the grant of license of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules, 1914, to possess gun-powder, other explosive or detonators required *bona fide* for blasting purposes

(25) to remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883) or the Agriculturists' Loans Act (XII of 1884)

(26) to remit the fees chargeable on applications for the grant of licenses issued in accordance with the provisions of any rule under section 9 of the Indian Petroleum Act, 1899 (VII of 1899) for the possession of dangerous petroleum for use on motor-vehicles and for its transport thereon for the purpose of use therein;

(27) to remit the fees chargeable on copies of decrees of Civil or Revenue Courts situate in the territories of His High-

ness the Gaekwar of Baroda forwarded to any Court i
Presidency of Fort St. George for execution in pursuance (
provisions of section 44 of the Civil Procedure Code, 19C
of 1908),

(28) to direct the fee chargeable on the following
ments filed in claims preferred under the Madras Here(
Village Offices Act, 1895 (Madras Act III of 1895) sha
limited to the sum specified below against each, namely:—

plaint, petition for execution or memorandum of a
to a Collector—eight annas;

memorandum of appeal to the Board of Revenue-
rupees;

(29) to remit the fees chargeable (*a*) on copies of j
ment, decrees or orders passed on claims preferred unde
Madras Hereditary Village Offices Act, 1895 (Madras Act
of 1895) and (*b*) on applications filed by either party in
course of the trial of suits or appeals or in the course of ex
tion of decrees under the said Act;

(30) to reduce the fees chargeable in suits by Governr
ryots, for the recovery of land sold for arrears of revenue
the amount which would be chargeable if the value of
subject-matter were only the rent of the land payable for
year next before the date of presentation of the plaint;

(31) to remit the fees chargeable on applications made
toddy-drawers and shop-keepers for the grant of licenses
mitting them or their servants to draw toddy from cocoanut
other palms;

(32) to remit the fees chargeable on all communica
made under Chapter II of the Madras Proprietary Estate Vill
Service Act, 1894 (Madras Act II of 1894) by a proprietor
any Revenue officer relating to the appointment and con
of village officers;

(33) to remit the fees chargeable on the following appli
tions made by cultivators of the hemp plant (*Cannabis Sat*
or Indica) in the Madras Presidency:—

(1) Application for a licence to cultivate the hemp pl
(Cannabis Sativa or Indica);

(2) Application for permission to harvest a crop of he
plant and manufacture of intoxicating dr
therefrom; and

(3) Application for a permit to transport intoxicat
drugs extracted from the hemp plant.

(34) to remit the fee chargeable on applications made
distillers and Warehouse-keepers in the Madras Presidency

he Excise Officer in charge of the distillery or warehouse for he issue of a permit for the transport of country spirit,

(35) to remit the fees chargeable in respect of plaints in uits instituted before the Collector under sections 55, 56, 95, 12, 144 and 160 of the Madras Estates Land Act, 1908 (Madras Act I of 1908) and in respect of objection and petitions presented o the revenue officer under section 166 (1) of the same Act,

(36) to remit the fees chargeable on applications, petitions nd copies which are filed, exhibited or recorded in or received r furnished by village Court constituted under the Madras 'illage Courts Act 1889 (Madras Act I of 1889) as amended y Madras Act II of 1920, and plaints filed in panchayat Courts;

(37) to remit the fees chargeable on applications for transfer of registry in the revenue accounts in respect of ryotwari holdings in the Madras Presidency,

(38) to remit the fees chargeable on applications for transfer of registry in the land records of house sites in towns in the Madras Presidency,

(39) to reduce the fee now chargeable under Article I of Schedule I of the Madras Court Fees (Amendment) Act, 1922 (V of 1922), in respect of a plaint, or written statement pleading a set off or counter claim, presented to a Court outside the Presidency Town in any suit filed as a small cause suit, when the amount or value of the subject-matter exceeds Rs 500, but does not exceed Rs 1,000, to twelve annas for every ten rupees or part thereof such amount or value. Provided that the full fee shall become payable if for any reason the suit cannot be tried as a Small Cause Court suit.

(40) to remit the fees chargeable under Article 1 of Schedule II of the Court Fees Act, 1870, as amended by the Madras Court Fees Amendment Act, 1922 in respect of applications to which the first paragraph of the said Article applies, made by consular officers in pursuance of their official functions, to officers of the Customs Department.

No 180 Under sec 35 of the Court Fees Act, 1870 (VII of 1870), as amended by section 4 of the Act XXXVIII, 1920 and in supersession of all previous notifications on the subject it is hereby notified that, in exercise of the power to reduce or remit in the Presidency of Fort St George all or any of the fees mentioned in the first and second Schedules to the said Act, the Governor in Council has been pleased to make the following remissions hereinafter set forth, in the fees leviable under Articles 11 and 12 of the first Schedule to the Court Fees Act on the property of:

(1) any person subject to the Naval Discipline Act (29 and 30 Vict C 109), the Army Act (44 and 45 Vict. I. 58), the Air Force Act (7 and 8, Geo 5, C. 51) or the Indian Army Act, 1911 (VII of 1911), who is killed or dies from wounds inflicted, accidents occurring or diseases contracted while on active service or on service, which is of a warlike nature or involves the same risk as active service, and

(2) any person being a Government servant, Civil or Military, who dies from wounds inflicted while in actual performance of his official duties or in consequence of those duties:—

(a) where the amount of or value of property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under Part X of the Indian Succession Act, 1925, does not exceed Rs 50,000, the whole of the fees leviable in respect of the property;

(b) where the said amount or value exceeds Rs 50,000 to remit the whole of the said fees in respect of the first Rs 50,000 and

(c) where any property passes more than once in consequence of such deaths to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property

(42) to remit the fees chargeable on applications for mutations of names in respect of the property of any person subject to military law either under the Army Act (44 and 45 Victoria, C. 58) or under the Indian Army Act, 1911 (VII of 1911) who is killed or dies of wounds inflicted, accident occurring or diseases contracted within twelve months before death while on active service in the present war

APPENDIX I.

H

PUNJAB

Reductions and remissions of court-fee.

The following notification issued by the Punjab Government under the Court Fees Act, reducing and remitting fees, is published for information and guidance:—

The 27th March, 1922.

No 10495 Under s 35 of the Court Fees Act, 1870, as modified by the Devolution Act, 1920, and in supersession of all previous notifications under that section, it is hereby notified that in exercise of the power to reduce or remit in the territories administered by the Governor of the Punjab, all or any of the fees mentioned in the first and second Schedules to the said Act, the Governor of the Punjab has been pleased to make the reductions and remissions hereinafter set forth, namely.—

(1) to remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use and on applications for renewal of stamped paper which has become spoiled or unfit for use,

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government;

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or Officer without summoning the defendant rejects it, not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the District in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded;

(4) to remit the fees chargeable on—

(a) copies of village settlement-records furnished to landholders and cultivators during the currency or the termination of settlement operations;

(*b*) lists of fields extracted from village settlement-record for the purpose of being filed with petitions o plaint in Settlement Courts:

Provided that nothing in this clause shall apply to copie of judicial proceedings, or to copies of village settlement-record (other than lists of fields) extracted as aforesaid, which may b filed in any Court or Office;

(5) to direct that the fee chargeable on appeals from order under sec 47 of the Code of Civil Procedure, 1908, shall b limited to the amounts chargeable under Article 11 of the secon Schedule;

(6) to remit the fees chargeable on security-bonds for th keeping of the peace by, or good behaviour of, persons othe than the executants;

(7) to remit the fee payable under Article 1, clause (*e*), o the second Schedule on an application or petition presented t a Chief Revenue or Executive Authority, or to any Chief Office charged with the executive administration of a Division when the application or petition is accompanied by a petition to the Government of India and contains merely a request that that petition may be forwarded to the Government of India;

(8) to remit the fees chargeable under Articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or offices for the private use of persons applying for them:

Provided that nothing in this clause shall apply to copies when filed exhibited or recorded in any Court of Justice or received by any public officer;

(9) to remit the fees chargeable under paragraph 4 of clause (*a*) and paragraph 2 of clause (*b*) of Article 1 of the second Schedule, on applications for orders for the payment of deposits in cases in which the deposit does not exceed Rs 25 in amount

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application,

(10) to remit, with reference to clause (xi) of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land;

(11) to remit the fees chargeable on applications presented to officers of Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884);

(12) to remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884),

(13) to remit the fees chargeable on an application made by a person to the Collector under sub-section 2 of sec 42 of the Indian Stamp Act, 1899 (II of 1899), for the return to that person, or to the Registration Officer who impounded it, of a document impounded and sent to the Collector by a Registration Officer,

(14) to remit the fees chargeable on the following documents:—

(*a*) a copy of the charge framed under s 210 of the Code of Criminal Procedure, 1898, or of a translation thereof, when the copy is given to an accused person,

(*b*) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person,

(*c*) copy or translation of a judgment in a case other than a summons case, and a copy of the heads of the Judge's charge to the jury, when the copy or translation is given under section 371 of the said Code to an accused person;

(*d*) copy or translation of the judgment in a summons case, when the accused person to whom a copy or translation is given under section 371 of the said Code is in jail,

(*e*) copy of an order of maintenance, when the copy is given under sec. 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid;

(*f*) copy furnished to any person affected by a judgment or order passed by a criminal Court, of the Judge's charge to the Jury or of any order, deposition or other part of the record when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which on its being applied for under section 548 of the said Code, the Judge or Magisfrate, for some special reason to be recorded by him on the copy, thinks fit to furnish withc such payment;

(*g*) copies of all documents furnished under the o of any Court or Magistrate to any Gov .

Advocate or Pleader or other person especially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any criminal Court;

(h) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings,

(i) copies of judgments or depositions required by officers of the Police Department in the course of their duties;

(15) to direct that the fee chargeable on an application to a Collector, with respect either to liability to assessment or to the amount or rate of an assessment or for a *refund* of income-tax under the Indian Income Tax Act,1918, shall be limited to one anna,

(16) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any public office;

(17) to direct that, when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject matter of a suit for the possession of, or to enforce a right of preemption in respect of, a practical share of that part shall, for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of that share;

(18) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification;

(19) to remit the fee chargeable on an application for the grant of a license for the vend of stamps;

(20) to direct that no court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine the refund of which has been ordered by competent authority;

(21) to remit the fees chargeable on applications for copies of documents detailed in clauses 4 and 13 *supra;*

(22) to remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates

on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913 (VIII of 1913): provided that the said share or interest was registered in the branch register in the United Kingdom under the Indian Companies (Branch Registers) Act, 1900 (V of 1900), and that such member was at the date of his decease domiciled elsewhere than in India,

(23) to remit the fees chargeable on applications presented to officers of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed,

(24) to remit the fee chargeable on applications and petitions presented to a Collector or any revenue officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province;

(25) to remit the fees chargeable on applications for the grant of licenses issued in accordance with the provisions of any rule made under section 9 of the Indian Petroleum Act, 1899 (VIII of 1899) for the possession of dangerous petroleum for use on motor vehicles and for its transport thereon for the purpose of use therein,

(26)(*a*) to remit the fees payable under Schedule II upon application for the grant or renewal of licenses or duplicates under the Indian Arms Rules, *1920*, in respect of which a fee is payable under those rules, and

(*b*) to reduce to one anna all fees exceeding one anna payable under Schedule II upon other applications relating to licenses or duplicates granted or renewed under the said rules;

(27) to remit the fees chargeable on applications for the grant of licenses of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules, 1914, to possess gun-powder, other explosives or detonators required *bona fide* for blasting purposes;

(28) to remit as follows the fees on the property of any person subject to military law either under the Army Act (44 and 45 Victoria, C 58), or under the Indian Army Act, 1911 (VIII of 1911) who is killed or dies of wounds inflicted, accidents occurring or diseases contracted within three years before death while on active service in the war of 1914-1919.—

(*a*) where the amount of or value of property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under the Succession Certificate Act,

or in the certificate under Bombay Regulation No 8 of 1927, does not exceed Rs. 50,000, to remit the whole of the fees leviable in respect to that property;

(*b*) where the said amount or value exceeds Rs. 50,000, to remit the whole of the said fees in respect of *the first Rs 50,000, and*

(*c*) where any property passes more than once in consequence of such death to remit, in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property;

(29) to remit the fees chargeable on applications for mutations of names in respect of the property of any person subject to military law either under the Army Act (44 and 45 Victoria, C 58) or under the Indian Army Act, 1911 (VIII of 1911), who is killed or dies of wounds inflicted accident occurring or diseases contracted within twelve months before death while on active service in the war of 1914-1919;

(30) to remit the fees chargeable on copies of decrees of Civil or Revenue Courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any Court in British India for execution in pursuance of the provisions of section 44 of the Civil Procedure Code, 1908 (V of 1908);

(31) to remit the fees chargeable on copies of orders or proceedings under s 37 of the Punjab Land Revenue Act, 1887 *(XVIII of 1887) made or recorded by Collectors or other* Revenue Officers engaged in revising a record-of-rights under a notification published in accordance with section 32 of the said Act;

Provided that the copy is furnished for the purpose of being filed with an application or petition to a Collector or other Revenue Officer engaged as aforesaid in revising a record-of-rights or to the Commissioner of the division, or to the Financial Commissioner, Punjab, relating to matters connected with the assessment of land or the ascertainment of rights thereto, or interests therein, if presented previous to the final confirmation of such revision;

(32) to remit the fees chargeable on applications under section 97 of the Punjab Land Revenue Act, 1887 (XVII of 1887), made by village officers in accordance with the provisions of rule 94 of the rules under that Act published with the Financial Commissioner's notification No 142, dated the 9th November, 1909;

(33) to remit the fees chargeable on copies of all records maintained under the provisions of Chapter IV of the Punjab

Land Revenue Act, 1887 (XVII of 1887), when such copies are exhibited or recorded in any Court of Justice or are received or furnished by any public officer.

(34) to remit the fees chargeable on applications for the grant of fishing licenses prescribed by the rules made by the Government of the Punjab under section 3 of the Punjab Fisheries Act, 1914 (Punjab Act II of 1914)

APPENDIX I.

I

Reductions and remissions of court-fees in the United Provinces.

U P Govt Notification No 1231|VII—353, dated the 11th October, 1923 (Judl Civil Department) as amended by subsequent orders

118 Under section 35 of the Cour Fees Act 1870 (VII of 1870), as amended by the Devolution Act, No XXXVIII of 1920, and in supersession of all previous notifications under that section, it is hereby notified that, in exercise of the power to reduce or remit, in the whole or in any part of the territories under his administration, all or any of the fees mentioned in the first and second Schedule to the said Act, the Governor in Council has been pleased in respect of the whole of the territories under his administration to make with effect from 1st November 1923, the reductions and remissions hereinafter set forth, namely—

(1) to direct that the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper of value not exceeding Rs. 25, which has become spoiled or unfit for use, or is no longer required for use, and on applications for renewal of stamped paper of value not exceeding Rs 25 which has become spoiled or unfit for use, shall be limited to two annas;

(2) to remit the fees chargeable on applications in writing relating exclusively to the purchase of salt which is the property of the Government,

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any civil or revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it not for any substantial defect, but on account of an entirely technical error in form only, so as to leave the plaintiff free to prosecute precisely the

case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of stamp should, in his opinion be refunded;

(4) to direct that the fees chargeable on appeals from orders determining any question under s 47 or section 144 of the Code of Civil Procedure, 1908 (Act V of 1908) and therefore having the force of decrees, shall be subject to maximum of—

(*a*) two rupees when the appeal is presented to the District Judge in a civil or revenue case or to the Commissioner of the Division in a revenue case; and

(*b*) five rupees when the appeal is presented to the High Court of Judicature at Allahabad or the Chief Court of Oudh in a civil or revenue case or to the Board of Revenue in a revenue case.

(5) to direct that the fees chargeable under paragraph 2 of clause (*b*) or under clause (*d*) of Article 1 of the second Schedule on applications for orders for the payment of a deposit shall be limited to two annas if the deposit does not exceed Rs 10; to four annas if the deposit exceeds Rs. 10 but does not exceed Rs 25; and to eight annas if the deposit exceeds Rs 25, but does not exceed Rs 50:

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application;

(6) to remit the fees chargeable on applications for loans under the Agriculturists' Loans Act, 1884 (XII of 1884);

(7) to remit the fee chargeable on application made by a person to the Collector under sub-section 2 of section 42 of the Indian Stamp Act, 1899 (II of 1899), for the return to that person or to the Registration officer who impounded it, of a document impounded and sent to the Collector by a Registration officer;

(8) to remit the fees chargeable on the following documents, namely,—

(*a*) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1898 (V of 1898), or of a translation thereof, when the copy is given to an accused person;

(*b*) copy of the evidence of supplementary witnesses after commitment, when the copy is given under section 219 of the said Code to an accused person,

(c) copy or translation of a judgment in a case other than a summons-case, and copy of the heads of the Judge's charge to the jury, when the copy or translation is given under section 371 of the said Code to an accused person

(d) copy of translation of the judgment in a summons-case, when the accused person whom the copy or translation is given under section 371 of the said Code is in jail;

(e) copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid,

(f) copy furnished to any person affected by a judgment or order passed by a Criminal Court of the Judge's charge to the jury, or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which, on its being applied for under section 548 of the said Code, the Judge or Magistrate for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment;

(g) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court;

(h) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings;

(i) copies of judgments or depositions required by officers of the Police Department in the course of their duties.

(9) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in court or public office,

(10) to direct that, if the amount of the fee [illegible] any case involves a fraction of an anna, the fraction

remitted except where otherwise expressly provided by this notification;

(11) to direct that no court-fee shall be charged on an application for the re-payment of a fine or of any portion of a fine, the refund of which has been ordered by competent authority;

(12) to remit the fees chargeable on applications for copies of documents detailed in clause 8 supra.

(13) to remit the fees chargeable on applications presented to officers of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed;

(14) to remit the fee chargeable on applications and peti-tions presented to a Collector, or any Revenue officer having jurisdiction equal or subordinate to that of a Collector, for advice or assistance from the Agricultural department of the province;

(15) to remit as follows the fees leviable under Articles 11 and 12 of the first Schedule on the property of,—

(i) any person subject to the Naval Discipline Act (29 and 30 Vict., C 109), the Army Act (44 and 45 Vict., C. 58), the Air Force Act (Constitution) Act (7 and 8 Geo. 5, C 51) or the Indian Army Act, 1911 (VIII of 1911), who is killed or dies from wounds inflicted, accidents occurring or diseases con-tracted while on active service or on service which is of a war-like nature or involves the same risk as active service, and (ii) any person being a Government servant, Civil or Military, who dies from wounds inflicted (*a*) while in actual performance of his official duties, or (*b*) in consequence of duties;

(*a*) where the amount or value of property in respect of which the grant of probate or letters of administra-tion is made or which is specified in the certificate under Part X of the Indian Succession Act, 1925, does not exceed Rs. 50,000, the whole of the fees leviable in respect of that property;

(16) Cancelled See Notification No. 1299|X—497, dated the 22nd March 1932.

(17) to remit the fees chargeable on copies of decrees of Civil Courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any Court in British India for execution in pursuance of the provisions of section 44 of the Civil Procedure Code, 1908 (V of 1908);

(18) to reduce to eight annas the fee chargeable on a copy of any number of entries in a settlement record relating to any one village in the Kumaun division;

(19) (i) to remit the fees payable on all documents filed, exhibited or recorded in, or furnished by, the Court of the Special Judge under the Bundelkhand Encumbered Estates Act 1903 (U P Act I of 1903),

(ii) to remit the fees payable on all documents connected with the proceedings in the Court of the Commissioner under the Act, except the memoranda of appeal and on applications for revision of any decision or order of the Special Judge under Chapter VI thereof,

(iii) to reduce to eight annas the fee payable on any appeal against a decision of the Special Judge under Chapter VI of the Act,

(20) to remit the fees chargeable on notices of claims under section 6, sub-section (c) of the Indian Forest Act, 1878 (VII of 1878) presented to Forest Settlement Officers in the district protected forests of the Kumaun division;

(21) to remit the fees payable on copies of decrees and applications for execution forwarded by Civil Courts to Collectors under Rules 2 and 6, Board's Circular 25-II.

(22) to remit the fees chargeable under Articles 6, 7 and 9 for the first Schedule on copies furnished by Civil or Criminal Courts or revenue Courts or offices for the private use of persons applying for them;

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer

(23) Applications made to a District Magistrate for revision of an order passed by a returning officer, under Rule 26 of the rules made under esction 172 of the United Provinces District Boards Act, 1922;

(24) to remit all fees payable upon applications relating to matters connected with the ascertainment of rights to land or of interests therein presented to a record officer or an assistant record officer in any district under survey and record operations in the United Provinces;

(25) to remit all fees payable upon

(i) all petitions of appeal filed by Government servants against departmental orders of punishment; and

(ii) copies of orders against which Government servants appeal, and which they file with their petitions of appeal;

(26) to remit fee payable under the Court Fees Act appeals preferred under s 128 of the United Provinces D

Boards Act, 1922 (Act No X of 1922), against an assessment or an alteration of an assessment of a tax on circumstances and property;

(27) to remit fees payable under Schedule II of the Court Fees Act upon applications presented under s. 58 (1) of the Agra Tenancy Act, 1926 (United Provinces Act No III of 1926);

(28) to remit fees payable under Article 1 (*a*), Schedule II of the Court Fees Act, 1870, upon any application or petition presented to any Municipal Commissioner under Act for the time being in force for the conservancy or improvement of any place

(29) to remit fees payable under the Court Fees Act, 1870, on a complaint made by an officer or servant of a District Board in his official capacity,

(30) to remit in the whole of the area comprised in the district of Mirzapore, except the land described in the Schedule to the Mirzapore Stone Mahal Act (Act V of 1886), the fee payable under Article 1 (*b*) of the second Schedule to the Court Fees Act, 1870, as amended by the United Provinces Court Fees (Amendment) Act, 1932, upon all applications presented to th Superintendent, Stone Mahal, Mirzapore, or, in his absence, t the treasury or sub-treasury officer at Chunar, for the grant of license to quarry stone or for transport of stone;

(31) t[illegible] Schedule II of the Cour Fees Act, [illegible] cations, for the gran or renewal [illegible] the following classe of government servants who require a license but are exemp from licence fees under Schedule VII (7) of the Indian Arm Rules, 1924, in respect of the arms noted against each:

(1) Excise Inspectors . .	One revolver or pistol.
(2) Patwaris employed in the hill portion of the Kumaun division .	One shot gun.
(3) Forest rangers . . .	One 12 bore gun
(4) A Sub-inspector of Police who is certified by the Deputy Inspector General of Police under whom he is serving to require an automatic pistol owing to the nature of his duties .	One automatic pistol [illegible]

(32) to direct that, when a part of an es[illegible] annual revenue to Government under [illegible] ent is recorded in the Collector' [illegible] l with such revenue, the value of [illegible] the possession of, or to enforce [illegible] of a fractional share of that [illegible] computation of the amount [illegible] Act in the suit, be deemed n[illegible]

the revenue separately assessed on that part as may be rateably payable in respect of the share,

(33) to direct that in the whole Puranpur Tahsil, district Pilibhit, the fee chargeable on a suit for commutation of rent filed by a tenant or tenants in the Court of the special Roster Officer, will be limited to eight annas, provided that where there are more plaintiffs than one all tenants joining in the suit are tenants of the same landholder and the holdings in respect of which the suit is brought, are situated in the same mahal and village,

(34) to remit, with effect from April 17, 1934, the fee chargeable on all petitions of objections or memoranda of appeal filed by the Zemindars and tenants to the Courts of Sub-divisional Officers or Collectors concerning the amount of remissions worked out under the Fluctuation Scheme, *i e*, the scheme proposed by Government to adjust rent and revenue to major fluctuations in prices This notification will cease to have effect from September 30, 1934,

(35) to direct that court-fee chargeable under Article 1, Schedule I of the Court Fees Act, 1870, on appeals presented to a Collector from orders passed under section 79 of the Agra Tenancy Act, shall be subject to a maximum of Re 1,

(36) to remit that court-fee payable on complaints made by officers or servants of Notified Area Committees and Town Area Committees in their official capacity.

PROCESS FEES

APPENDIX II.

Rules under the Court Fees Act relating to fees payable under that Act.

As framed by the High Court of Judicature at Fort William in Bengal.

A—Process Fees.

1 The fees in the following tables shall be charged for serving and executing the several processes against which they are respectively ranged:—

C. O. No 6 of 30th April 1891

PART I

Table of fees in the High Court, Appellate Jurisdiction

Article 1—In every case in which personal or substituted service of any process on parties to the cause is required—

	Rs.	A	P.
when not more than four persons are to be served with the same document *one fee* .	3	0	0
when such persons are more than four in number, then the fee above mentioned and an additional fee of 8 annas for every such person in excess of four	0	8	0

Provided that, in the last-mentioned case, where such persons reside in the same or immediately adjacent villages, the additional fee may be such sum, not exceeding the amount of fee prescribed, as the High Court may, in the particular case, determine:

Rule No 6 of 9th August 1901.

Provided, also, that, in analogous cases, where the appellant is the same, but the respondents are different, but reside in the same or immediately adjacent villages, the same rule shall apply.

Article 2—In every case in which personal or substituted service of any process on any persons who are not parties is required—

C. O. No 6 of 20th April 1891.

	Rs	A	P.
when the number of such persons is not more than four, *one fee*	3	0	0
when there are more than four such persons, then the fee above mentioned for the first four, and an additional fee of eight annas for every one in excess of that number	0	8	0
Article 3—For the execution of a warrant for arrest of the person . .	3	0	0
Article 4—For service or execution of any process issued by the Court, not specified in any preceding Article of this part	3	0	0

PART II.

Table of fees in the Courts of Judges and Subordinate Judges, and in the Revenue Courts when the suit in the Revenue Courts in which the process is issued is valued at a sum exceeding Rs 1,000

(See Rule 2 of the Rules under s 22 infra)

Article 1—In every case in which personal or substituted service of any process on parties to the cause is required—

	Rs.	A.	P
where not more than four persons are to be served with the same document, *one fee* .	2	0	0
when such persons are more than four in number, then the fee above mentioned and an additional fee of eight annas for every such person in excess of four . .	0	8	0

Article 2—In every case in which personal or substituted service of any process on any persons who are not parties is required—

	Rs	A	P.
when the number of such persons is not more than four, *one fee*	2	0	0
when there are more than four such persons, then the fee above mentioned for the first four, and an additional fee of eight annas for every one in excess of that number .	0	8	

Article 3—Where process of attachment of property actual seizure is issued—

	Rs.	A	P
(*a*) for the seizure under the order of attachment	2	0	0
(*b*) for each man necessary to ensure safe custody of property so attached, when such man is actually in possession, *per diem*	0	8	0

Note 1—When process of attachment is issued in a number of cases relating to the same or neighbouring villages, the fee (*a*) must be paid in each case, the daily fee (*b*) only for the men actually employed

Rule No 3 of 1909.

Note 2—The daily fee (*b*) is to be paid at the time of obtaining the process for so many days as the Court shall order, not being ordinarily less than fifteen days, and the number of days required for the coming and going of the officer; but where the officer is not to be left in possession then the daily fee is to be paid only the time to be occupied by the officer going, effecting the attachment, and returning When the inventory filed by the judgment-creditor shows the property to be of such small value that the expense of keeping it in custody may probably exceed the value, the Court shall fix the daily fee with reference to the provisions of Order XXI, Rule 43, of the Code of Civil Procedure:

Provided that, if it appears that for any reason the number of days fixed by the Court under this note, and in respect of which fees have been paid, is likely to be exceeded, and the decree-holder desires to maintain the attachment, the decree-holder shall apply to the Court to fix such further number of days as may be necessary, and the additional fees in respect thereof shall be paid in the manner provided in Rule 3 If such additional fees be not paid within the period originally fixed and in respect of which fees have been paid, the attachment shall cease on the expire of that period.

	Rs	A	P
Article 4—For proclamation and publication of any order of prohibition under Order XXI, Rule 54 of the Code of Civil Procedure, irrespective of the number of such proclamations or publications . .	2	0	0
Article 5—For the publication by posting up of a copy or copies of the notification of any proceeding or process, not specially mentioned in any article of this part, irrespective of the number of such publications .	2	0	0
Article 6—For executing a decree by the arrest of the person or for executing a warrant of arrest before judgment	10	0	0

Article 7—When an order for the sale of property, other than an order for the sale of distrained property under Act VIII of 1885, is issued—

	Rs	A	P.
(*a*) for proclaiming the order of sale under Order XXI, Rule 66 of the Code of Civil Procedure, a fee of .	2	0	0
(*b*) for selling the property, a percentage or poundage on the gross amount realized by the sale up to Rs 1,000, at the rate of	*2 per cent.*		
together with a fee on all excess of gross proceeds beyond Rs 1,000, at the rate of	*1 per cent.*		

Provided that when a sale of immovable property is set aside on applications made under Order XXI, rules 89, 90 and 91 of the Code of Civil Procedure or under s. 174 of the Bengal Tenancy Act, 1885 (VIII of 1885), any poundage or other fee charged for selling the property shall on application, be refunded.

Provided further that no refund shall be made on the application of the decreeholder when a sale is set aside on the ground of material irregularity or fraud in publishing or conducting the sale and it appears that the decree-holder was privy thereto

Note 1—The fee under clause (*a*) must be paid when the process is obtained

The percentage or poundage under clause (*b*) must be paid—

(1) in a case where the purchaser is a person other than the decree-holder—at the time of making the application for payment of the proceeds of sale out of Court, as provided in Rule 4; and

(2) in a case where the decree-holder has been permitted to purchase—at the time of the presentation of his application for permission to set-off the purchase-money against the amount of his decree as provided in Rule 5

Note 2—The percentage leviable under this Article shall be calculated on multiples of Rs 25, *i e*, a poundage fee of As. 8 should be levied for every Rs 25 or part of Rs. 25 realized by the sale up to Rs 1,000, and in the case of the proceeds of the sale exceeding Rs 1,000 an additional fee of As. 4 for every Rs 25 or part thereof should be levied

Note 3—In cases in which several properties are sold in satisfaction of one decree, only one poundage fee, calculated o the gross sale-proceeds, should be levied, *2 per cent* ' ' charged on the gross proceeds up to Rs 1,000, and *1 per* on such proceeds exceeding Rs 1,000.

	Rs A P
Article 8—For service of any process not specified in any preceding Article of this part part (including one under s 163 (1) of the B. T. Act and any other notice or injunction or proclamation)	2 0 0

PART III.

Table of fees in the Courts of Munsifs and of Small Causes, and in the Revenue Courts, when Part II does not apply [except in the Suits specified in Part IV]. i e, where the claim exceeds Rs 50 but does not exceed Rs 1,000

Article 1—In every case in which personal or substituted service of any process on parties to the cause is required—

	Rs A P
where not more than four persons are to be served with the same document, *one fee* .	1 0 0
where such persons are more than four in number, then the fee above mentioned, and additional fee of four annas for every such person in excess of four . . .	0 4

Article 2—In every case in which personal or substituted service of any process on any persons who are not parties is required—

where the number of such persons is not more than four, *one fee*	1 0
where there are more than four such persons, then the fee above mentioned for the first four and an additional fee of four annas for every one in excess of that number .	0 4

Article 3—Where process of attachment of property by actual seizure is issued—

(*a*) for the seizure under the order of attachment	1 0
(*b*) for each man necessary to ensure the safe custody of property so attached, when such man is actually in possession, *per diem* .	0 8

Note 1—When process of attachment is issued in a number of cases relating to the same or neighbouring villages, the fee (*a*) must be paid in each case, the daily fee (*b*) only for the men actually employed

	Rs	A	P
Article 4—For the proclamation and publication of any order of prohibition under Or XXI, A 54, of the Code of Civil Procedure, irrespective of the number of such proclomations or publications . .	1	0	0
Article 5—For the publication by posting-up of a copy or copies of the notification of any proceeding or process not specially mentioned in any Article of this Part, irrespective of the number of such publications	1	0	0
Article 6—For executing a decree by the arrest of the person or for executing a warrant of arrest before judgment .	4	0	0
Article 7—Where an order for the sale of property other than an order for the sale of distrained property under Act VIII of 1885 is issued—			
(*a*) for proclaiming the order of sale under O XXI, R 66 of the Code of Civil Procedure, a fee of	1	0	0
(*b*) for selling the property, a percentage or poundage on the gross amount realized by the sale up to Rs 1,000 at the rate of	*2 per cent*		
together with a further fee on all excess of gross proceeds beyond Rs 1,000 at the rate of	*1 per cent.*		

Provided that when a sale of immovable property is set aside on applications made under O XXI, RR 89, 90, or 91, of the Code of Civil Procedure, or under section 174 of the Bengal Tenancy Act (VIII of 1885), any poundage or other fee charged for selling the property shall, on application, be refunded

Provided further that no refund shall be made on the application of the decree-holder when a sale is set aside on the ground of material irregularity or fraud in publishing or conducting the sale and it appears that the decree-holder was privy thereto

NOTE 1—The fee under clause (*a*) must be paid when the process is obtained

The percentage or poundage under clause (*b*) must be paid—

(1) in a case where the purchaser is a person other than the decree-holder—at the time of making the application for payment of the proceeds of sale out of Court, as provided in Rule 4, and

(2) in case where the decree-holder has been permitted to purchase—at the time of the presentation of his application for permission to set-off the purchase-money against the amount of his decree as provided in Rule 5

NOTE 2—The percentage leviable under this Article shall be calculated on multiples of Rs 25, *i e.*, a poundage fee of As 8 should be levied for every Rs 25 or part of Rs 25 realized by the sale up to Rs. 1,000, and in the case of the proceeds of the sale exceeding Rs. 1,000, an additional fee of As 4 for every Rs 25 or part thereof should be levied.

NOTE 3—In the cases in which several properties are sold in satisfaction of one decree, only one pounadge fee calculated on the gross sale-proceeds, should be levied, *2 per cent* being charged on the gross sale-proceeds up to Rs 1,000, and *1 per cent* on such proceeds exceeding Rs. 1,000.

	Rs	A	P.
Article 8.—For service of any process not specified in any preceding article of this part . .	1	0	0

PART IV.

Table of fees in the Courts of Munsifs, in Small Cause Courts, and in the Revenue Courts, where the suit is for debt or damage to personal property, or for rent, and where the claim does not exceed Rs 50

	Rs	A	P
Article 1—In every case in which personal or substituted service of any process on parties to the cause is required where not more than four persons are to be served with the same document, *one fee* . .	0	8	(
where such persons are more than four in number, then the fee above mentioned and an additional fee of As. 4 for every such person in excess of four	0	4	(

NOTE—Suits under sections 30 and 52 of the Bengal Tenancy Act, 1885 (VIII of 1885) are suits for rent within the meaning of the heading of this part

	Rs	A	P
Article 2—In every case in which personal or substituted service of any process on any person who are not parties is required, for each person to be served	0	4	(
Article 3—Where process of attachment of property by actual seizure is isseud—			
(*a*) for the seizure under the order of attachment	0	8	(
(*b*) for each man necessary to ensure the safe custody of property so attached, when such man is actually in possession, *per diem*	0	8	0

NOTE 1.—When process of attachment is issued in a number of cases relating to the same or neighbouring villages, the fee (*a*) must be paid in each case, the daily fee (*b*) only for the men actually employed.

NOTE 2.—Same as in Part III.

	Rs	A	P.
Article 4.—For the proclamation and publication of any order of prohibition under O. XXI, R. 54, of the Code of Civil Procedure irrespective of the number of such proclamations or publications . .	1	0	0
Article 5.—For the publication by posting-up of a copy or copies of the notification of any proceeding or process, not specifically mentioned in any Article of this part, irrespective of the number of such publications	1	0	0
Article 6.—For executing a decree by arrest of the person or for executing a warrant of arrest before judgment . .	1	0	0
Article 7.—Where an order for the sale of property other than an order for the sale of distrained property under Act VIII of 1885 is issued—			
(*a*) for proclaiming the order of sale under O. XXI, R. 66, of the Code of Civil Procedure, a fee of	1	0	0
(*b*) for selling the property, a percentage or poundage on the gross amount realized by the sale, up to Rs. 1,000, at the rate of	*2 per cent*		
together with a further fee, on all excess of gross proceeds beyond Rs. 1,000, at the rate of . .	*1 per cent.*		

Provided that, when a sale of immoveable property is set aside on applications made under O. XXI, RR. 89, 90, or 91, of the Code of Civil Procedure, or under section 174 of the Bengal Tenancy Act (VIII of 1885), any poundage or other fee charged for selling the property shall, on application, be refunded.

Provided further that no refund shall be made on the application of the decree-holder when a sale is set aside on the ground of material irregularity or fraud in publishing or conducting the sale and it appears that the decree-holder was privy thereto.

NOTE 1.—The fee under clause (*a*) must be paid when the process is obtained.

The percentage or poundage under clause (*b*) must b[e] paid—

(1) in a case where the purchaser is a person other th[an] the decree-holder—at the time of making

Form No (M) 180 in volume No 2 (of the Rules and Circular Orders) One searching-fee shall only be charged for any number of copies taken from the same record and included in the same application No searching-fee shall be charged in respect of copies of papers which have not been deposited on the racks of the record-room.

NOTE 1—The searching-fee is intended to meet all cases of search, no distinction is made between searches which entail a small amount, and those which require a large amount of labour

NOTE 2—As regards applications for copies under the Court Fees Act, 1870, Schedule II, Article 1 (*a*), paragraph 5, as amended by the Bengal Court Fees Amendment Act, 1922, only one application with a single court-fee stamp of two annas is necessary when a copy is applied for any number of documents on the same record, but when copies are required of documents in more than one record, there must be separate applications with a separate stamp on each

NOTE 3—*In connection with applications* for search of documents and the like, in a *Collector's office*, the searching-fee should be remitted by the Civil Court to the Collector in court-fee stamps and not in cash

Rule No 12 of 1892 amended by Rule No 3 of 1905, framed under the Charter Act.

2 In all Civil Courts, a uniform charge shall be made for the preparation of manuscript copies whether certified or uncertified, at the rate of 4 annas per folio. These terms, it is to be carefully explained to all subordinate officers, merely denominate a certain quantity of manuscript. the folio to consist of 150 words English or 300 words Vernacular, four figures counting as one word

3 (*a*) This charge shall be levied by means of an impressed stamp of 4 annas on each sheet of paper corresponding with the folio to be provided by the applicant *for a copy*. Each of these sheets shall contain a folio, that is, 150 words English or 300 words Vernacular As there are 25 lines in each sheet, each line shall contain, as nearly as possible, 6 words English or 12 words Vernacular

(*b*) In the case of type-written copies, certified or uncertified, the following uniform charges shall be made, viz :—

(1) The impressed stamped paper of four annas, referred to in the preceding paragraph, for copies of documents containing 150 type-written words or less

(2) The same impressed stamped paper of 4 annas, with an adhesive stamp of 4 annas, affixed thereto, for copies of documents containing from 151 to 300 type-written words; and

(3) The same impressed stamped paper of 4 annas, with an adhesive stamp of 8 annas affixed thereto, for copies of documents containing from 301 to 450 type-written words. These sheets should be used for copies of lengthy documents For the concluding portion of such documents, the stamped paper (1), (2), or (3) should be used, according to the number of words remaining to be typed

(c) These charges, it will be seen, correspond exactly with the charges for manuscript copies, *viz*, 4 annas for a folio of 150 English words The sheets will be divided into three eqaul parts by blue lines, each part being intended for 150 type-written words In the case of the charges (2) and (3) above, the adhesive stamp will be affixed across the perforated line on the top of the sheet of the impressed stamped paper

4 In the case of certified copies, the court-fee chargeable under the Court Fees Act, 1870, as amended by the Bengal Court Fees (Amendment) Act, 1922, should be levied by affixing the necessary stamps to the first folio of the copy

5 Uncertified copies may be converted into certified copies, after comparison with the originals, upon the application of the person to whom they have been granted, and upon his filing with such application the necessary court-fee stamps required by law

6. When an applicant requires his copies to be furnished on the day of application, an extra fee of one rupee (or, if the copies exceed four folios, of 4 annas for each folio) shall be charged on all copies so furnished, to be levied from him by a court-fee stamp, which should be affixed to the application for the copy, and be entered in the Register of Court-fee Stamps Care, however, is to be taken that other applicants for copies do not materially suffer by the arrangement If the granting of other copies be much delayed for this rule, an extra hand ought to be told off to furnish their copies

7. In the case of maps and plans, no general rule can be laid down In each case, a charge will have to be fixed with reference to the difficulty or intricacy of the work to be done. Half will be paid to the copyist and half credited to Government on account of examination fees and cost of materials

8 All copies, whether certified or uncertified must, before issue, be examined by a salaried officer, the copies themselves will, in all cases, be made by licensed copyists, who will be remunerated at the rate of 2 annas per folio

Note—The duty of examining copies should, as a rule, be entrusted to the Comparing or Examining Clerks, and if there

is none in the office, to the Head Clerk, or Sherishtadar. Th copyists and typists must not be allowed to examine for eac other

9 A certified copy must be "certified to be a true copy, must bear the seal of the Court, and must be signed in full, i not by the presiding officer, then by officer hereinafter named viz :—

At the headquarters of a District—
in the case of copies of judicial documents not being will —by the Serishtadar;
in the case of copies of other documents including copie of wills—by the Head Clerk:

In Courts of Small Causes constituted under Act IX o 1887—
all certified copies—by the Head Clerk;
In other Courts at out-station—
all certified copies—by the Serishtadar.

In every case, the certifying officer will append to his signature the words "authorized under section 76, Act I of 1872"

The words "Certified to be a true copy" and "Authorized under section 76, Act I of 1872," may be impressed by means of a stamp

Note—Uncertified copies should only be marked as "examined," and initialled by the Examiner.

10 Half of the charge of 4 annas per folio, levied by means of impressed stamp, represents the payment of Government, on account of the salary of Examiners, cost of paper, etc., the remaining one-half will represent the earnings of the section-writers, whose account will be made up monthly, and the amount due to each paid out of contingencies. Those payments must be checked at the time with upper part of each stamp, which, when the copy is ready must be torn off from each sheet along the perforated lines and then endorsed with the copyist's name, and kept till the end of the month Care must be taken to see that nothing in excess of two-thirds of the amount realized in stamps is paid away.

11. To prevent the risk of stamped slips being used more than once, the officer passing a copyist's account will, after checking it as directed, tear up the slips to pieces, and cause them to be burnt in his presence. A certificate that this has been done must be attached to the contingent bill on which the copyist's fees are drawn.

12. To protect the interests of the Government, care must be taken to see that all copies issued from Courts are prepared

on the prescribed stamped paper; they must be written on one side of the sheet only, and must not contain more than authorized number of words On the other hand, care must be taken to see that applicants are not imposed upon by the copyist's spreading their writing over a larger number of sheets than is necessary. By insisting on the number of lines in each sheet being uniform, control may easily be exercised in this matter, the number of words in few of the lines of each folio being checked.

13 Under ordinary circumstances, the time for furnishing the copies required shall not be later than 1 P M of the fifth open day after the presentation of the application

14. When a copy of a decree, judgment or order is granted, the following particulars must invariably be recorded on the back of the copy itself, and in the form given below, for the information of the Appellate Court (section 12, Act IX of 1908, the Indian Limitation Act) —

Date of application for the copy
Date of notifying the requisite number of folios and stamps
Date of delivery of the requisite folios and stamps.
Date on which the copy was ready for delivery.
Date of making over the copy to applicant
Cost of Copy.

Note—Compare 9 Cal L R 293, which is to be strictly followed—*H C* 1757, 1883

CRIMINAL.

Rules framed by the Calcutta High Court.

C. O No 1 of 24th January 1890.

1. *Charge for Copies*—(*a*) In all Criminal Courts, a uniform charge shall be made for the preparation of copies, whether certified or *uncertified*, at *the rate of* 4 annas per folio This term, it is to be carefully explained to all subordinate officers, merely denominates a certain quantity of manuscript: the folio to consist of 150 words English, or of 300 words Vernacular, 4 figures counting as one word.

(*b*) This charge shall be levied by means of an impressed stamp of 4 annas on each of paper corresponding with the folio to be provided by the applicant for a copy. Each of these sheets shall contain a folio, that is, 150 words English or 300 words Vernacular As there are 25 lines in each sheet, each line shall contain as nearly as possible 6 words English or 12 words Vernacular

(*c*) All copies, whether certified or uncertified, must, before issued, be examined by a salaried officer. The copies themselves will in all cases, be made by section writers, who will be remunerated at the rate of 2 annas per folio

(*d*) Uncertified copies may be converted into certified copies upon the application of the person to whom they have been granted, and upon his filing with such application the necessary 12-anna court-fee stamps required by law.

(*e*) Certified copy must be "certified to be a true copy," must bear the seal of the Court, and must be signed in full, if not by the Presiding Officer, then by the officer hereinafter named, *viz* :—

At the head-quarters of a District—
all certified copies—by the Head Clerk of the Court of the District Magistrate:

In Court at Sub-divisions—
all certified copies—by the Head Clerk of the Court of the Sub-divisional Magistrate.

In every case the certifying officer will append to his signature the words "Authorized under section 76, Act I of 1872."

The words "Certified to be a true copy" and "Authorized under section 76, Act I of 1872," may be impressed by means of a stamp

(*f*) One-half of the charge of 4 annas per folio, levied by means of impressed stamp, represents the payment to Government on account of the salary of Examiners, cost of paper, etc., the remaining one-half will represent the earnings of the section-writers, whose accounts will be made up monthly, and the amount due to each paid out of contingencies These payments must be checked at the time with the upper part of each sheet, which, when the copy is ready, must be torn off from each sheet along the perforated lines, and then endorsed with the copyist's name, and kept till the end of the month Care must be taken to see that nothing in excess of two-thirds of the amount realized in stamps is paid away

(*g*) To prevent the risk of stamped slips being used more than once, the officer passing the copyist's account will, after checking it as directed, tear up the slips to pieces, and cause them to be burnt in his presence A certificate that this has been done must be attached to the contingent bill on which the copyists' fees are drawn.

(*h*) to protect the interests of the Government, care must be taken to see that copies issued from the Courts are prepared in the prescribed stamp paper they must be written on one side of the sheet only, and must not contain more than the authorized number of words On the other hand, care must be taken to see that applicants are not imposed upon by the copyists spreading the writing over a larger number of sheets than is necessary By insisting on the number of lines in each sheet being uniform, control may easily be exercised in this matter, the number of words in a few of the lines in each folio being checked The business of a copyist is (like most other occupations) one calling for skill, and greatly dependent for its successful practice on experience Copyists, therefore, must possess or acquire skill in their business, or they ought not to be retained Copyists who fail to do their work satisfactorily must be removed

(*i*) When an applicant requires his copies to be furnished on the day of application, an extra fee of one rupee (or, if the copies exceed four folios, of 4 annas per each folio) shall be charged on all copies so furnished, to be had from him by a court-fee stamp, which should be affixed to the application for the copy, and be entered in the Register for Court-fee Stamps Care, however, is to be taken that other applicants for copies do not materially suffer by the arrangement If the granting of other copies be much delayed by this rule, an extra hand ought to be told off to furnish their copies

(*j*) Under ordinary circumstances, the time for furnishing the copies required shall not be later than 1 P.M. of the fifth open day after the presentation of the application.

(*k*) When a copy of a judgment, sentence, or order is granted, the following particulars must invariably be recorded in the back of the copy itself, and in the form* given below for the information of the appellate Court (section 12, Act IX of 1908) —

Date of application for the copy
Date of delivery of requisite stamped sheets.
Date on which the copy was ready for delivery †
Date of making over the copy to the applicant.

Cost of Copy.

(*l*) In the case of certified copies, the court-fee chargeable under the Court Fees Act should be levied by affixing the necessary stamp to the first folio of the copy.

(*m*) In the case of maps and plans, no general rule can be laid down In each case a charge will have to be fixed with reference to the difficulty or intricacy of the work to be done Half will be paid to the copyist and half credited to Government on account of examination fees and cost of materials.

In criminal cases, parties are entitled to obtain copies, certified or uncertified or any portion of the record of trial. This ruling covers such Police-papers as may be made use of as evidence at the trial As regards other Police-papers, the High Court can pass no order —*H C* 1972 (1880).

Complainants must pay copying fees whenever they want copies But an accused is, under section 371 of Act V of 1898 entitled, in cases other than summons-cases, to a copy of the judgment absolutely free of charge, and in plain paper.—*H C Proceedings, May*, 1881

As a general rule, copies of exhibits in a criminal case should certainly not be granted to persons who are strangers to the case A Magistrate should use his discretion in each case, acting on the general principle that no copies should be given to a stranger without a good cause being shown —*H C. Proceeding*, 1882

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* This form is printed in the reverse of the stamped sheets and used for copies.

† Compare 9 C. L. R 293 which is to be strictly followed—*H C 1757, 1893*

PROCESS FEES IN BIHAR AND ORISSA

(CIVIL)

No 55—(*The 10th December, 1920*)

Rules framed by the High Court under clause (1) of section 20 of the Court Fees Act, 1870, declaring the fees chargeable for the service and execution of process issued by the Civil and Revenue Courts

1 The fees in the following tables shall be charged for serving and executing the several processes against which they are respectively ranged:—

Nature of process	Table of fees		
	1. In Courts of District Judges 2 In Courts of Subordinate Judges 3 *In Courts of Munsifs and Revenue Courts where the suit in which process is issued is valued at over Rs. 1,000*	In Courts of Munsifs and Small Causes and in Revenue Courts where the suit in which process is issued does not exceed Rs 1,000 and exceeds Rs 50 in value	In Courts of Munsifs and Small Causes and in Revenue Courts where the suit does not exceed Rs. 50 in value.
1	2	3	4
Article 1—In every case in which personal or substituted service of any process on parties to the cause is required, where not more than four persons are to be served with the same document—one fee	4 8 0	1 8 0	0 12 0
When such persons are more than four in number, then the fee abovementioned and an additional fee as mentioned in the table for every such person in excess of four	0 12 0	0 6 0	0 6 0
Article 2—In every case falling within columns 2 and 3 in which personal or substituted service of any process on any persons who are not parties is required, when the number of such persons is not more than four—one fee.	4 8 0	1 8 0	

Nature of process.	Table of fees. 1. In Courts of District Judges. 2. In Courts of Subordinate Judges. 3. In Courts of Munsifs and Revenue Courts where the suit in which process is issued is valued at over Rs. 1,000.	In Courts of Munsifs and Small Causes and in Revenue Courts where the suit in which process is issued does not exceed Rs. 1,000 and exceeds Rs. 50 in value.	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit does not exceed Rs. 50 in value.
1	2	3	4
When there are more than four such persons, then the fees above-mentioned for the first four and an additional fee as mentioned in the table for every one in excess of that number	0 12 0	0 6 0	
In every case falling within column 4 in respect of a similar process for each person.			0 6 0
Article 3.—Where process of attachment of property by actual seizure is issued—			
(*a*) for the seizure under the order of attachment.	4 8 0	1 8 0	0 12 0
(*b*) for each man necessary to ensure safe custody of property so attached when such man is actually in possession, per diem.	0 9 0	0 6 0	0 6 0
Article 4.—For the proclamation and publication of any order of prohibition under Order XXI, Rule 54 of the Code of Civil Procedure, irrespective of the number of such proclamations or publications	4 8 0	1 8 0	1 8 0
Article 5.—For the publication by posting of a copy or copies of the notification of any proceeding or process not specially mentioned in any article irrespective of the number of such publications.	3 0 0	1 8 0	1 8 [illegible]

Nature of process.	Table of fees		
	1. In Courts of District Judges 2. In Courts of Subordinate Judges. 3. In Courts of Munsifs and Revenue Courts where the suit in which process is issued is valued at over Rs. 1,000	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit in which process is issued does not exceed Rs 1,000 and exceeds Rs 50 in value	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit does not exceed Rs 50 in value
1	2	3	4
Article 6—For executing a decree by the arrest of the person or for executing a warrant of arrest or for executing a warrant of arrest before judgment	15 0 0	6 0 0	1 8 0
Article 7—Where an order for the sale of property other than an order for the sale of distrained property under Act VIII of 1885 is issued—			
(*a*) for proclaiming the order of sale under Order XXI, Rule 66 of the Code of Civil Procedure, a fee of	3 0 0	1 8 0	1 8 0
(*b*) for selling the property, a percentage or poundage on the gross amount realized by the sale up to Rs 1,000 at the rate of	2 0 0 per cent.	2 0 0 per cent	2 0 0 per cent.
together with a further fee on all excess of gross proceeds beyond Rs. 1,000, at the rate of	1 0 0 per cent.	1 0 0 per cent.	1 0 0 per cent.
Article 8—For service of any process not specified in any preceding article	3 0 0	1 8 0	1 8 0

NOTE—(1) When process of attachment mentioned in Article 3 is issued in a number of cases relating to the same or neighbouring villages, the fee (*a*) must be paid in each case, the daily fee (*b*) only for the men actually employed.

(2) The daily fee (*b*) is to be deposited with the Cashier as peremptory receipt at the time of obtaining the process for

so many days as the Court shall order, not being ordinarily less than fifteen days, and the number of days required for the coming and going of the officer; but where the officer is not to be left in possession, the daily fee is to be deposited only for the time to be occupied by the officer going, effecting the attachment and returning When the inventory filed by the judgment-creditor shows the property to be of such small value that the expense of keeping it in custody may probably exceed the value, the Court shall fix the daily fee with reference to the provisions of Order XXI, *Rule 43 of the Code of Civil Procedure.*

Provided that, if it appears that for any reason the number of days fixed by the Court under this note, and in respect of which fees have been paid, is likely to be exceeded and the decree-holder desires to maintain the attachment, the decree-holder shall apply to the Court to fix such further number of days as may be necessary and the additional fees in respect thereof shall be deposited in advance If such additional fees be not paid within the period originally fixed and in respect of which fees have been paid, the attachment shall cease on the expiry of the period

The Nazir will purchase a court-fee stamp of the amount actually incurred in deputing a peon and affix it on the process under the signature of the Presiding Officer in payment of the fees The balance of the deposit, if any, will be available for refund to the party

NOTE 2—(1) When a sale of immovable property mentioned in Article 7 is set aside under section 47 or under Order XXI, Rule 92 of the Code of Civil Procedure or under section 174 of *the Bengal Tenancy Act (VIII of 1885) any poundage* or other fee charged for selling the property shall, on application, be refunded

(2) The fee under (*a*) must be paid when the process is obtained

The percentage or poundage under clause (*b*) must be paid (1) in a case where the purchaser is a person other than the decree-holder, at the time of making the application for payment of the proceeds of sale out of Court, as provided in Rule 4 and (2) in a case where the decree-holder has been permitted to purchase, at the time of the presentation of his *application* for permission to set off the purchase-money against the amount of his decree as provided in Rule 5

(3) The percentage leviable under this article shall be calculated on multiples of Rs 25 (*i e*, a poundage fee of 8 annas should be levied for every Rs 25 or part of Rs. 25 realised by the sale up to Rs. 1,000 and in the case of the proceeds of the sale exceeding Rs. 1,000 an additional fee of 4 annas for every Rs. 25 or part thereof should be levied).

(4) In cases in which several properties are sold in satisfaction of one decree, only one poundage fee, calculated on the gross sale proceeds should be levied, 2 per cent being charged on the gross sale proceeds up to Rs 1,000 and one per cent on such proceeds exceeding Rs 1,000

2 Notwithstanding the provisions of Rule 1 no fee shall be chargeable for serving and executing any process, such as a notice, rule, summons ,a warrant of arrest, which may be issued by any Court of its own motion, solely for the purpose of taking cognizance of and punishing any act done, or words spoken, in contempt of its authority

3. *The fees hereinbefore provided*, except those mentioned in the next rule, shall be payable in advance at the time when the petition for service or execution is presented, and shall except where otherwise provided be paid by means of stamps affixed to the petition in addition to the stamps necessary for its own validity.

4 The proceeds of a sale effected in execution of any decree will only be paid out of Court on an application made for that in writing, and the poundage fee for selling the property provided in clause (b) of Article 7 must be paid by stamps affixed to, or impressed upon, the first of such applications, whether it be or be not made by the person who obtained the order for sale, or whether it does or does not extend to the whole of the proceeds No fee will be chargeable upon any such application subsequent to the first

5 When a decree-holder happens to be the auction-purchaser his application for an order to set off the purchase money shall in addition to the stamp necessary for its own validity, be stamped with stamps of the value of the poundage-fee due for selling the property under clause (*b*), Article 7

6 Upon the hearing of such petition, the costs of execution, including the amount of the stamp attached to the petition, shall be ascertained and shall be added to the decree, and in cases in which the amount of the purchase-money exceeds the amount of the decree and of such costs, the decree-holder who has so purchased the property shall pay into Court 25 per cent of the balance of the purchase-money after deducting the amount of the decree and of such costs, and shall pay the balance at the expiration of fifteen days in accordance with Order 21, Rule 85 of the Code of Civil Procedure

7 When in order to the service of any process, a pe[illegible] has to cross a ferry, the amount if any, legally eligible as [illegible] shall be paid by the Court executing such process from its [illegible] permanent advance sanctioned by the local Government for [illegible] purpose

Note—This rule will not apply to the district of Purnea and the Madhepura Munsiffi in the district of Bhagalpore or the periods of the year during which additional fees under the next succeeding rule are leviable.

8 Throughout, or in any part of the district of Purnea and the Madhepura Munsiffi in the district of Bhagalpore and for the periods of the year during which travelling except by boat is, in the opinion of the District Judge, impracticable, the fees chargeable for the service of processes shall be increased by 25 per cent in order to provide for payment of the boat-hire or ferry-toll rendered necessary by the state of the country. The additional fees may, however, be reduced to 12½ per cent over the fees ordinarily leviable, at the discretion of the District Judge, in any part of the district where, or at any season of the year when, the levy of the larger amount is found to be unnecessary

Note (1)—Fractions of an anna will not be levied, less than six pies being ignored and six pies and over being treated as one anna

Note (2)—The process-servers' boat-hire passed under this rule should alone be included under the head of "Process-serving charges" under "Special Contingencies" (*vide* Resolution of the Financial Department of the Government of Bengal, dated the 4th August, 1890)

9 In cases in which the process is to be served in the jurisdiction of another Court, the proper-fee chargeable under Rule 1 read with Rule 7 shall be levied, in the manner above directed, on the application for the transmission of the process to that Court, and a note shall be made on the process stating that this has been done A Court which receives from another Court, whether in the same Province or not, a process bearing a certificate that the proper-fee has been levied, shall cause it to be served without further charge

Note (1)—The fees paid in pursuance of these rules must in all proceedings be deemed and treated as part of the necessary and proper costs of the party who pays them.

Note (2)—By arrangement between the Government of India and His Highness the Nizam of Hyderabad, Civil process for service or execution within His Highness' territories will be issued and served in accordance with the above rule.

Processes issued by Civil Courts in His Highness the Nizam's territories will be served or executed in Bihar and Orissa free of charge

Note (3)—Processes issued by Courts in India for service by Colonial Courts must be accompanied by a remittance sufficient to meet the cost of service.

In Mauritius, the cost of service is Rs. 3 per person in town, and to this must be added 75 per cent. mile travelling allowance for service in the country For processes not accompanied by an English translation and requiring translation in Mauritius, an additional fee of Rs. 10 should be remitted

Note (4)—*By arrangement between the Government of* ıdia and the Chiefs of the Feudatory States named in the chedule below, civil processes for service or execution within ıe territories of those states will be issued and served in :cordance with the above rule.

Process issued by the Civil Courts within those territories f these states will be served or executed in Bihar and Orissa ·ee of charge in accordance with the rule above

SCHEDULE.

aster	Raigarh	Korea
'andgaon	Sarangarh	Changlehaker
'andgaon	Udaipur	Makrai
hairagarh	Jashpur	Chhui Khadan
awardha	Sirguja	Sakti

The 10th December 1920

CRIMINAL.

RULE I OF 1920

I

No 56—*Substitute* the following rule which will come nto operation on the 1st January 1921, in place of Rule I, at ages 110-111 of the General Rules and Circular Orders, Volume I, Criminal.—

1 The fees hereinafter mentioned shall be chargeable for serving and executing processes to which the fees are respectively attached, *viz* —

	Rs	A	P
(1) Warrant of arrest— For the warrant in respect of each person named therein . .	1	8	0
(2) Summons— For the summons in respect of one person, or of the first two persons residing in the same place	0	12	0

	Rs A P
In respect of every additional person named therein	0 6 0
(3) Proclamation of absconding party under section 87 of the Criminal Procedure Code—	
For the proclamation	3 0 0
(4) Proclamation for witness not attending (section 87)—	
For the proclamation	0 12 0
(5) Warrant of attachment—	
For the warrant	1 8
Where it is necessary to place officers in charge of property attached, for each officer so employed per diem . .	0 6
(6) Written order—	
For the order	1 8
(7) Injunction—	
For the injunction	1 8

Note.—The provisions of the Clauses III and IV o section 31, Act VII of 1870, and of Rules 3 and 4 below, appl also to injunctions Criminal officers are, however, reminde that injunctions in proceedings not connected with offences ar not chargeable with any fee An injunction under section 143 Criminal Procedure Code, would not carry any fee (Rule No 1(of 26th September 1882)

	Rs A P
(8) *Notice*—	
For the notice	1 8 (

II

Insert the following note below Rule 7 at page 114 of the General Rules and Circulars Orders, Volume I, Criminal, and number the existing note as "Note 2":—

Note (1).—Fractions of an anna will not be levied, less than six pies being ignored and six pies and over being treated as one anna.

Rules under S. 20 (ii). (Bombay).

Fees chargeable for serving processes in case of certain offences

The fees chargeable for serving and executing processes issued by the Court of any Magistrate in the case of offences, other than offences for which Police Officers may arrest without a warrant, shall be those shown in the Appended Table below

1. In cases falling within chapters 19, 20 and 21 of the Indian Penal Code.—

i	For every summons or notice	4 annas
ii	For every warrant of arrest	1 rupee
iii	For every proclamation for absconding party or witness (Criminal Procedure Code, sections 87 and 88)	1 rupee
iv	For every warrant of attachment .	1 rupee.

2 In all other cases the fee chargeable for every process shall be one-fourth of the fee shown in the above table

Proviso.—No fee shall be levied on any process issued upon the complaint of any Public Officer asking as such Public Officer

The Court may remit the process-fees, in whole or in parts, in cases other than those falling under Chapters 19, 20 and 21 of the Indian Penal Code, whenever the Court is satisfied that the complainant or the accused has not the means of paying them

Rules under sections 20 and 22 of the Court Fees Act

The following rules framed by the Honourable the Chief Justice and Judges of the High Court under sections 20 and 22 of the Court Fees Act VI of 1870, confirmed by the Government of Bombay and sanctioned by the Governor-General of India in Council are published for general information:—

High Court fees.

I.—The fees at present levied for serving and executing processes issued by the High Court in its Appellate Jurisdiction shall continue to be levied

II.—The fees chargeable by all other Civil Courts shall be those Civil Court's fees shown in the appended table.

III.—The remuneration of bailiffs, peons and other persons employed by any Civil Courts, other than the High Court, in the service and execution of processes shall be as follows.—

Scale of remuneration to bailiffs, peons, etc

1st Class	Rs. 25	Per mensem
2nd "	" 20	
3rd "	" 15	
4th "	" 12	
5th "	" 9	

Remuneration to European bailiffs

When it is necessary to entertain a European bailiff the pay of such bailiff shall be Rs. 50

IV.—The whole number of the process-serving establishment employed by the Civil Courts in each district shall be divided into five classes receiving the respective remuneration shown in the list.

Process serving establishment to be classed.

V.—Provided that no bailiff or peon shall be placed in the third class unless he is able to read and write well, nor in the fourth class unless he is able to read and write fairly.

Qualification for several classes.

VI.—In fixing the number of bailiffs and peons required to serve processes, District Judges shall consider that the average number of processes, which can be served during the year by each bailiff or peon, is as follows:—

Number of bailiffs to be employed in several districts.

Surat	1,000
Ahmednagar	
Ahmednagar	
Satara	
Thana	
Nasik	
Khandesh	
Poona	
Sholapoor	
Ahmedabad	700
Ratnagiri	400
Bijapur	
Dharwar	500
Belgaum	
Kanara	600

VII.—In fixing the number of subordinates require to serve processes in any Court of Small Causes, District Judges shall consider that the average number of processes, which can be served by each bailiff or peon, is as follows.—

Number of Subordinates to be employed by Courts of Small Causes

In the Small Cause Court—

Surat, Broach	1,000
Poona	1,500
Ahmedabad, Nadiad	1,200

VIII—When the salary of any bailiff or peon is paid by the party requiring their services (see note XII* below) additional temporary bailiffs or peons may be employed to a number not exceeding that of the men whose salary is thus paid If no additional men are employed, the amount should be credited to Government

Employment of additional temporary bailiffs or peons

IX—The following table contains the prescribed fees chargeable in Civil Courts in respect of processes and proclamations:—

As for processes and proclamations

TABLE

Fees chargeable in Civil Courts in respect of processes and proclamations

	Name of process	Amount leviable in: Any Court of Small Causes and any Subordinate Judge's Court in a suit in which no second appeal lies as provided in section 586 of the Code of Civil Procedure	District Court and Subordinate Judge's Court in cases not provided in the preceding column	Mamlatdar's Courts
		Rs A P	Rs. A P	Rs. A P.
I	For each summons (*a*) to a single defendant, respondent or witness.	0 4 0	1 0 0	0 3 0

* Rules I to VIII published in the Government Gazette, dated

	Rs A P.	Rs. A P.	Rs A P
(*b*) to every additional defendant, respondent or witness, residing in the same village, if the process be applied for at the same time	0 2 0	0 8 0	0 2 0
II For every warrant—			
(*a*) of arrest in respect of every person to be arrested			
(*b*) of attachment in, respect of such warrant	0 8 0	2 0 0	
(*c*) of sale in respect of every such warrant.			
III For proclamation, injunction or order and ever- process not otherwise provided for	0 8 0	2 0 0	

Note I—With the sanction of the Court any party ma[y] pay the cost of proceeding by railway or any public conveyanc[e] where such is available, and in such case the process-server sha[ll] be bound to proceed by such railway or public conveyance.

Note II—For process applied for and order to be execute[d] as emergent the fee will be ordinary and half as much agai[n]

Note III—Fees how to be charged—Where one individu[al] is to be served in more than one capacity, *e g*, personally an[d] also as guardian of a minor or minors, only one fee is to b[e] levied

Note IV—Re-issue of processes unserved—When a proces[s] issued by a Civil Court other than a Mamlatdar's Court i[s] returned unserved for service, a half fee only shall be charge[d] on the occasion of each re-issue

This rule applies whatever may be the reason which pre[-]vented service (*e g*, whether the failure to serve was due to th[e] fault of the party on whose behalf it was issued or not), an[d] whether the identical paper is re-issued or fresh paper.

Note V—Issue of second process on service being set aside etc—When the service is set aside in an inquiry under sectio[n] 82, Civil Procedure Code,* or when witnesses, etc., have to b[e] summoned a second time in consequence of the Court not sittin[g]

July, 1888, page 597 being Rules I to VIII inclusive under High Court Circular No 107 at pp. 70 and 71 of the Book of High Court Circular [illegible] that Rule VIII was corrected [illegible] is" the words "Note XII"— 1895 Bombay Government

O. V. R. 19

or not taking up, or not completing the hearing of the case on the day on which they were first summoned, no further fee is to be levied upon re-issue

Note VI—If a warrant has already been issued to arrest a judgment-debtor who has failed to pay the decretal amount and who has been ordered to be imprisoned in a civil jail and such warrant of arrest is in force, no further fee is leviable on the order of committal to jail

Note VII—*Process issued by Court without fee*—No fee is to be charged for any process issued by a Court of its own motion

Note VIII—*Exemption of proclamations*—No process-fee shall be charged on proclamations under section 10 of Regulation VIII of 1872

Note IX—*Fees for processes, etc, in suits under Act XVII of 1879*—The fees levied for all processes in suits to which Chapter II of the Dekkhan Agriculturists' Relief Act (XVII of 1879) applies, except suits of description mentioned in section 3, clauses (w) and (x) to which an agriculturist is not a party, shall be one-half the fees which would be leviable in similar suits, to which the said Act does not apply.

Note X—No fees shall be levied for the service of any notice or other process issued in proceedings taken under Chapter IV of the Dekkhan Agriculturists' Relief Act, XVII of 1879

Note XI—Nothing contained in these rules (or in any rules heretobefore made by the High Court under section 20 of the Court Fees Act VII of 1870) shall apply to process issued by a Village Munsiff under Chapter V of the said Act (XVII of 1879)

Note XII—*Salary of bailiffs, etc, required from party*—

(*a*) When the services of one or more bailiffs or peons are required for a longer period than three days, the party on whose application the process was issued shall, in addition to the fee leviable under the above rules, be required to pay the whole salary of such bailiffs or peons for the whole period in excess of three days.

(*b*) The time occupied in going to and returning from the place at which service of process is to be made shall not be reckoned as a portion of the above period.

(*c*) If the amount payable on account of salary under the above rule shall involve a fractional part of an anna, such part shall be remitted

X—For the purposes of these rules the Courts of the Agents or Sardars shall be treated as District Courts and all other Civil Courts not specially mentioned, as Subordinate Judge's Courts.

No court-fee leviable on certificates of decree holders under section 258, C P Code —No court-fee is leviable upon a certificate of a decree-holder under section 258 of the Civil Procedure Code, although such certificate declares that the judgment-creditor has received a small sum or a thing of less value in discharge of a larger sum due under the decree, or in complete discharge of the decree

Any copy which on its first presentation has been duly stamped, and of which the stamp has been cancelled, may, if otherwise admissible, be used in the same or any other proceeding without a fresh stamp

XI —*Court-fees when to be paid and how* —Before any process is issued in any court, the proper officer of the court should calculate the amount to be paid as court-fees, and should give information of such amount to the person by whom the fees are payable Such fees should be paid before the end of the fourth day after the day on which such information is given The court may, for sufficient reason, extend the time for payment

The stamps received for court-fees should be affixed to the application upon which the process is to be issued

Process to be prepared after receipt of the fees —After the fees have been received but not before, the necessary summons, notice, warrant or other process should be prepared.

Levy of fees to be endorsed on process issued beyond jurisdiction —When the process is to be issued beyond the jurisdiction of the court, a note should be made on the process to the effect that the proper fee has been levied.

XII —*Process issued by Courts in British territory to be served free of charge in Bombay Presidency* —A process issued by any court in British territory should be served free of charge by any court (including the Court of Small Causes at Bombay) in the Bombay Presidency, if it be certified in the process that the proper fee has been levied under the rules in force in the territory in which the court issuing the process is situated —B G. G, 1898, Pt 1, p 354

XIII(*a*).—*Processes to Straits Settlements how to be addressed Fee and postage to be remitted* —Processes for service in the Straits Settlements should be forwarded to the Registrar of the Supreme Court at Singapore, Penang or Malacca, as the case may be, and should be accompanied by a sum sufficient to cover the fees for service and postage, the remittance being by a Post Office Money Order.

Sufficient time, not less than three months from the date of posting, should be allowed by courts for the service of summons

and other documents on persons resident in the Straits Settlements and for the attendance of such persons before them — B. G G., 1900, Pt. I, p. 2365

(*b*) *Particulars to be given in summonses to His Highness the Nizam's territories* —In summonses sent to the Resident at Hyderabad for service on persons residing in the territories of His Highness the Nizam the name of each person's place of residence, that is, the district, village and moholla (locality), should be given in full in the summons—B G G, 189, Pt 1, p 1161

In the case of summonses to be served in the City of Hyderabad a period of five weeks should be fixed for return, and in the case of summonses to be served in the districts, a period of two months—B G G, 1890, Pt 1, p 125

124 *Processes to Burma* —Processes sent for service at any place where the language is different from that of the court issuing them, should be accompanied by translations in the language of such place or English The language of the Presidency Small Cause Court, Bombay, is English —B G Notification No 5149 of 1888 (B G G, 1888, Pt I, p 763)

125 Foreign processes issued by British Courts under the provisions of Government of India Notification No 1890—1, dated the 20th June, 1689, are not compulsory in British India —B G G, 1901, Pt I, p 186

126 Processes issued by the District Civil Courts in His Highness the Nizam's Dominions direct to Civil Courts in British India for service in the Districts within the Presidency Proper, or to the Court of Small Causes at Bombay, for service within the limits of the town of Bombay, shall be duly served by the Civil Courts concerned or the Court of Small Causes at Bombay, as the case may be, as if such processes had been originally issued by those courts and returned direct to the courts issuing them

127 Processes issued by any Civil Courts in British territory for service on persons residing in His Highness the Nizam's dominions shall be sent direct to the Districts Civil Courts* in those dominions having jurisdiction at the places where such persons reside, provided that processes for service in the City of Hyderabad and the suburbs shall be sent to the City Civil Court there

Processes for service on persons residing in Paigah and Jagir ilakas should be forwarded to District Courts of His

* For the designation of District Courts and the names of the Districts in His Highness' dominions *see* B G. G, 1889, Pt. I, p 1161.

Highness' *Government in the jurisdiction of which the* Paigah and Jagir is situated and not direct to the Paigah or Jagir authorities In such cases it should be ascertained from the parties concerned whether the person to be summoned resides in a Jagir or Paigah village, and, if so, the name of the district Court within the jurisdiction of which that village is situated.—H. C, Sup Civ Cir., No 15; B G G, 1904, Pt. I, p. 1742.

Where the processes for service in His Highness' dominions are issued for the appearance as a witness of any person *residing there, the amount of batta and travelling allowances* to which the witness is entitled shall be remitted, with the process by Money Order—B G G, 1899, Pt I, p 1161.

Processes sent by Courts for service from British India to His Highness the Nizam's dominions and *vice versa* will, after service, be conveyed back to the Courts of issue, whether British or Hyderabad, at single rates of postages.—B. G. G, 1901, Pt I, p 1432

It is notified that general orders have been circulated by the Director-General of the Post Office of India *that duly* franked official correspondence on the service of His Highness the Nizam will be delivered free—B. G G, 1901, Pt I, p. 1141.

Courts in British territory should send direct to the Courts of Districts concerned all summonses or commissions intended for service or execution within the limits of the territories of Mysore, and should fix such dates for their return, as will admit of their service or execution within the appointed time—B G G., 1900 Pt. I, p 2488.

Judicial notices, summonses and like judicial papers and notices in Revenue Appeals before the Mysore Darbar will be transmitted to the British authorities in India direct and not through the Resident—H. C Sup Civ. Cir., No. 33; B. G. G, 1906, Pt. I, p 403

**Process of certain Courts in Native States to be served free of charge by Courts in Bombay Presidency*—Processes issued by the Courts in Berar, Mysore, or in the territories of His Highness the Nizam, or in Gwalior, Dewas State (Senior Branch), Dewas State (Junior Branch) Rewa, Jaora, Rutlam, Dhar, Jhabua, Brawani, Ali Rajpur, Bhopal, Orchha, Datia, Panna, Ajaigarh, Charkhari, Bijawar Baoni Chhatarpur, Bharauli, "Kurwai and Narisingarh"† or by any of the Courts mentioned in the Government of India's Notification No

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* Printed as amended.—B. G G, 1889, Pt. I, p. 1077, and B. G G., 1897, Pt. I, p 466.

† The words quoted have been inserted by B. G. R. (P. D), No 1016, 9th Feb. 1904, H. C. Sup. Civ. Cir., No. 6

4053-1-A, dated the 11th September, 1902, republished at pages 1639 to 1642 of the *Bombay Government Gazette* for 1902, Part 1, or in subsequent notifications to which the provisions of section 650A of the Code of Civil Procedure* have been applied, shall be served free of charge by the Courts in the Bombay Presidency

Note—For the Table of the Courts to which the Governor-General in Council has declared the provisions of section 650A* to apply see the list in the Stamp Manual

132† *Processes of certain Courts in Native States to be served free*

When the name of the district where the summonsee resides is not known to the Court of issue, the summons may be forwarded to the "Indore Residency Vakil, Indore," for transmission to its destination Criminal summonses and miscellaneous processes for the recovery of money should be forwarded as heretofore to the Resident Processes issued by the Courts in Indore will be sent by the Courts direct and not through the Resident The execution of a decree of Civil Court in British India can only be obtained in the Indore Courts—B G Letter (J D), No 32.

Processes intended for the subjects of the following States and Thakurates should be forwarded to the address of the Political Officers in whose respective charges they are shown below:—

States and Thakurates	Address of the Officer holding the political charges
1 Karandia, Anna and Kheri Rajpur	The Resident at Gwalior Post Office, Gwalior Residency
2. Kaitha	The Resident at Indore, Indore
3. Dewas (Senior and Junior) Begli Pathihari and Uni	The Political Agent in Malwa, Nimuch

G R (J D), No 427, 21st Jan 1909 B G G, Pt I, p 225, H C Sup. Civ Cir, No 75; cancelling G R (J D), No 8011, 18th Dec 1902, B G G, 1906, Pt I, p 403, H C Sup Civ Cir, No 32, last para

133 The Baroda Courts will serve all summonses issued by Civil Courts in British territory on the understanding that the Darbar will not be asked to enforce attendance British Courts should serve civil summonses issued by Baroda Courts, on similar terms—B G G, 1901, Pt I, p 186

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* *See* now s 29 of Act V of 1908

† The names of Districts and Head Quarters have been substituted by H C. Sup Civ Cir No 66 (B G G, 1908, Pt I, p. 1693) for those originally mentioned in Cir. No 32.

133A Summonses issued by all British Indian Courts and all Courts established or continued by the authority of the Governor General in Council in the territories of any Foreign Prince or State, if sent to the Court of the Administrator, Sachin State, or that of the Diwan while the State is under British Administration, will be served by that Court as if the summons had been issued by itself, and after being so served will be returned with an endorsement of such service under the hand of the Judge of the Court—Bom. G. R (P. D) No 6334, 22nd September 1903; H. C Sup. Civil Circular No 1

134 The provisions of section 91 of the Civil Procedure Code (now Sch I, Or. V, r 30) allowing the substitution of a letter for a summons are to be applied in the case of all Covenanted and Commissioned Officers, Justices of Peace, First Class Subordinate Judges, First Class Magistrates of rank not below that of Deputy Collector, and First Class Sardars and other gentlemen of equal or superior rank.

135 Care should be taken to address Ruling Chiefs and gentlemen of rank in the appropriate style, which in any particular case, when necessity arises, may be ascertained from the Political Agent or the Political Department of the Secretariat On proper occasions titles may be used

136 When a village officer is summoned to give evidence, the summons should be served direct on such officer and a duplicate of it sent to the Mamlatdar, under whom he may be serving, for information; time being allowed, if possible, for making official arrangement for performing the duties at the village of the officer summoned

137 A Civil Court to which summons or other process has been sent for service should make a return within the time fixed for the hearing of the cause, stating whether service has been ffected or not, and if not, the reason for the non-service

138 If a Court to which a summons has been sent for service be satisfied that the defendant is intentionally avoiding service, such Court shall itself direct substituted service to be effected in such manner as it thinks fit under the provisions of the Code of Civil Procedure without further reference to the Court issuing the summons.

139 In cases under first schedule I, O. V, rr. 16 and 17, Civil Procedure Code (Act V of 1908), the officer who serves the summons or notice on a defendant or respondent should immediately on his return make an affidavit before the proper officer as to the service of the summons or notice for use in case it becomes necessary under O. IX, r. 6 to prove that the summons or notice was duly served and in case the Court con-

siders under O. XIX, r 1 of the Code, that there is sufficient reason for ordering the fact of service to be proved by affidavit.

140 No bailiff charged with the service of a process is entitled to call upon the party interested in the service to point out the person served.

It is the duty of the bailiff to use his best efforts to effect the service and it is only when he fails, inspite of such efforts, that the Court may order the party to render help to him.

In cases where the serving officer does not know the individual on whom the process is to be served but such individual is pointed out to him, there should be a verification of the endorsement on the process by the bailiff and also by the person who points out the individual served—H C Sup Civ Cir No 56, Bom G G, 1908, Pt I, p 619

PROCESS FEES IN THE CENTRAL PROVINCES.

In exercise of the powers conferred by section 20 of t Court Fees Act, 1870 (VII of 1870), as applied to the Canto ments of Mhow, Neemuch, Nowgong and Sehore, and Indc Residency Bazars and the Civil Lines of Nowgong, and wi the previous sanction of the Governor-General in Council t Hon'ble the Agent to the Governor-General in India is pleas to issue the following rules to regulate the fees chargeable f serving and executing processes in the said areas.

Grades of Courts

I The Courts in the said areas shall for the purpose levying fees for the service of processe be divided into three grades:—

Grades	Courts.
First	The Courts of the Agent to t Governor-General in Central India
Second	First Appellate Courts.
Third . .	District Courts, Court of Small Caus and other Civil Judges and Cour of Magistrates

Sacle of fees in such Courts.

II Fees for the service of processes shall be levied in eac grade of Court according to the follow ing scale, namely.—

Nature of process.	Courts of 1st grade.	Courts of 2nd grade.	Courts o 3rd grad.
	Rs. A. P.	Rs. A. P.	Rs. A. P
Summons, notice or other processes not being a warrant of arrest or attachment	2 0 0	1 0 0	0 4 (
Warrant of arrest	4 0 0	2 0 0	0 8 (
Warrant of attachment .	4 0 0	2 0 0	2 0 (

Separate process and separate fee for each person summoned.

A separate process shall be issued for each perso summoned or arrested, or upon who a notice is served; and subject to th Rules IV and V a separate fee shall be charged for each process.

Remission of fees in [ce]rtain cases and levy [of] half fee in others.

IV. When a service is set aside in any enquiry under the provisions of Order V, Rule 19 of the Code of Civil Procedure, 1908, or when witnesses, etc., have to be summoned a second time in consequence of the Court [no]t sitting, or not taking up or not completing the hearing of the [ca]se on the day, on which they were first summoned, no further [fe]e shall be levied on re-issue In all other cases one half of the [fe]es shall be levied upon re-issue

Exception in respect [of] process issued to [p]arties

V. When any process other than a warrant of arrest or of attachment is to be served upon four or more persons being parties, one fee only shall, according to the scale in Rule II, be charged in respect of the first four [p]rocesses and an additional fee, according to the subjoined scale [sh]all be charged for each process to be served in excess of four, [p]rovided that the aggregate amount of the fee leviable under this [r]ule shall not exceed the maximum prescribed for each grade [o]f Court

Nature of process	Courts of 1st grade	Courts of 2nd grade	Courts of 3rd grade
	Rs A P	Rs A P	Rs A P.
[R]ates of additional fee	0 8 0	0 4 0	0 2 0
[M]aximum	15 0 0	10 0 0	0 2 0

Mode of payment of [co]urt-fees on processes

VI The stamps received for court-fees shall be applied to the application upon which the process is to be issued

Service of processes [is]sued by or to Courts [in] British territory or [b]y or to Courts estab-[li]shed or continued by [th]e Government of India [or] by or to Courts in [N]ative States in Central [In]dia

VII. A process issued by any Court in British territory whether of Civil, Revenue, or Criminal jurisdiction, or by any Court established or continued by the Governor-General in Council or by any civil or revenue Court in Native States in Central India shall be served free of charge by any Court in the said areas, if it be certified on the process that the profer fee has been levied under the rules [i]n force in the territory in which the Court issuing the process [i]s situated When any Court in the said areas transmit a process [fo]r service or execution to any Court beyond its jurisdiction a [c]ertificate shall be endorsed on the process that the fee charge-

able under Rule II or Rule V, as the case may be, has been levied.

When process-server may travel by railway.

VIII. Ordinarily process-servers should travel on foot when proceeding to serve or execute processes, but in special cases, the Judge of the Court issuing the process, may permit the journey to be made by Railway. In such cases the permission should be in writing and the railway fare should be paid from judicial contingencies, and not charged to the person at whose instance the process is issued.

Power of Court to remit process fees.

IX. A Court may remit the process fee, in whole or in part whenever it is satisfied that the complainant or the accused has not the means of paying them

Exemption from payment of process fees.

X. No fee shall be chargeable for any process of a Criminal Court issued through the Police in cognisable cases, or for any process issued by a Court of its own motion in any case whatsoever or for any process issued upon the complaint of a public officer, acting as such officer. *See Gazette of India, dated 27-9-1913, Part II, pp.* 1797-99.

Rules under Sections 20 and 22 of the Court Fees Act.

MADRAS.

Rules under Sec 20 (1)

The following Schedule of fees chargeable for serving and xecution in processes issued by the High Court of Madras 1 its Appellate Jurisdiction, and by all Civil and Revenue Courts stablished within the High Court's Appellate Jurisdiction, aving been framed by the High Court under section 20 of the ourt Fees Act, 1870, and confirmed by the Government of ladras and sanctioned by the Governor-General of India in ouncil, will come into force from the 1st day of July, 1884 — *otification No 208, dated the 16th June, 1884, Pt I, p 382*

Schedule:—Civil and Revenue Courts

Nature of Process.	Amount leviable in	
	Any Court of Small Causes, District Munsif's Court or Revenue Court	A District Court or Sub-Judge's Court where the process is not issued in a Small Causes case
For each summons or notice—	Rs A P.	Rs A P
(*a*) to a single defendant, respondent or witness	0 8 0	2 0 0
(*b*) to every additional defendant, respondent or witness residing in the village, if the processes be applied for at the same time	0 4 0	0 8 0
II For every warrant— (*a*) of arrest in respect of every person to be arrested (*b*) of attachment in respect of every such warrant (*c*) of sale in respect of every such warrant (*d*) of delivery of possession in respect of every such warrant	1 0 0	2 0 0

Nature of Process	Amount leviable in	
	Any Court of Small Causes, District Munsif's Court or Revenue Court.	A District Court or Sub-Judge's Court, where the process is not issued in a Small Causes case
	Rs. A. P.	Rs A P
With an additional fee for the services of every officer entrusted with the warrant, for each day after the third day beginning with the day on which the warrant was issued		
(*e*) if such officer is an Amin	0 6 0	0 8 0
(*f*) if such officer is a Peon	0 4 0	0 6 0
(*g*) if such officer is a Revenue Inspector.	0 8 0	
III For every process in execution of a Village Munsif's decree. (NOTE—If the process is not executed no further fee for re-issue shall be levied)	0 8 0	
IV For proclamation, injunction or order and every process not otherwise provided for. An additional fee being leviable after the third day as above.	1 0 0	2 0 0
V.* In respect of sales, a fee by way of poundage on the purchase money, calculated at one anna in the rupee on the first 350 rupees, half anna in the rupee on any additional sum up to Rs 1,000, and quarter anna in the rupee on any additional sum above Rs. 1,000		

NOTE 1.—Any party may deposit the cost of proceeding by railway or any public conveyance, where such is available, and in such case the process-server shall be bound to proceed by such railway or public conveyance and the cost so deposited shall be part of the costs of the cause

* [illegible] 310-A, Civil Procedure Code [illegible]

NOTE 2—For process applied for and ordered to be executed as 'emergent' the fee will be the ordinary fee and half as much again.

Payment of additional process fees.

N.B.—Each process should be paid for according to the time which it really occupies. The party must not be charged for time occupied in serving processes other than his own, but he must pay for all the days which his own process or processes would have occupied, if it or they had alone been entrusted to the server. When one applicant puts in several processes to be executed at the same time in the same locality, the charge for any additional day occupied on account of such processes may be distributed over them (*H C Cir, 8th September, 1894, No 2607*)

Refund of process fees

When more than the amount required for the service of process is deposited, or when issue of process becomes unnecessary after deposit, the Courts are authorised to refund to the depositor the amount of the surplus fees in money and to charge the same to the contingent fund (*H C Circ 15th July, 1873, No 1229, Madras*)

Refunds when authorised under the above Proceedings should be granted by orders, payable on the Treasuries of the District in which the Court receiving the processes is situated (*H C Prods, 20th October, 1874, No 1599*)

Summons to witnesses, Allowances

* A party who desires the attendance of any witness before the Court, or a Commissioner appointed to take evidence, shall bring into Court a list, in form No 20, of the persons whose attendance he requires, stating the full name, and residence, description, of each person, and whether he is required to give evidence as an expert or otherwise or to produce any document, and in the latter case, specifying the date, if any, and description of the document, so as to identify it, and shall with such lists deposit in Court the prescribed fees for service of summons, and the total amount of the allowances to which the said persons are entitled for travelling and other expenses and in the case of an expert or scientific witness qualifying to give evidence

* Rules 74 and 75 and Appendix III to Civil Rules of Practice, 1902.

The said allowances shall be calculated according to the scale set out below:—

Class of witnesses	Travelling allowance.			Allowance for subsistence and other expenses, not exceeding per diem
	By rail.	By road	By sea or canal.	
				Rs A P
1st Class	1st Class fare	8 annas per mile	Actual expense of Passage	4 8 0
2nd Class	2nd Class fare	4 annas per mile	Do.	3 0 0
3rd Class	Intermediate or if there be no such then 3rd class	2 annas per mile.	Do	1 8 0
4th Class	3rd Class fare	2 annas per mile.	Do	0 12 0

NOTE—In calculating travelling allowance by road for distances exceeding ten miles, fractions of ten mile unit less than five miles are to be neglected while distances of five miles and above may be treated as equivalent to the unit of ten miles

Rules under section 20 (ii).

On and after the 1st Febuary 1890, all payments for the service of processes by the criminal Courts, subordinate to the High Court, in the case of offences other than offences triable by summons case procedure, for which the police may arrest without warrant shall be collected according to the rates fixed in the sub-joined schedule —

SCHEDULE —CRIMINAL COURTS

	Rs.	A	P
(1) Summons to defendant	0	8	0
And for every additional defendant if applied for at the same time and if resident in the same neighbourhood . . .	0	4	0
(2) Summons to a witness	0	8	0
And for every additional witness if applied for at same time, and if witness resides in the same neighbourhood . . .	0	4	0

(3) Warrant of arrest 0 12 0
(4) Notice, Order, Injunction, or Warrant not otherwise provided for . . . 0 8 0

N.B—(1) If a process is to be served or executed within radius of six miles from the Court-house, half the above rates ly are to be charged The Judge or every Court shall determine what villages are within the above radius, and a list of such illages shall be notified in a conspicuous place in the Court-house.

(2) When a warrant remains unexecuted for fifteen days after its delivery to the officer entrusted with its execution, an additional fee at the same rate shall be levied from the party at whose instance the warrant was issued for every fifteen days or portion of fifteen days until return is made, provided that the delay in executing the said warrant is not attributable to the officer of the Court

2 No fees shall be levied on processes issued upon complaints by public servants or officers or servant of a railway company acting in their official capacity, which under section 19, cl. (xviii) of the Court Fees Act, 1870, are exempt from complaint fees

PROCESS-FEES—CITY CIVIL COURT

The following Schedule of fees chargeable for serving and executing processes issued by the Madras City Civil Court has been framed by the High Court under section 10 of the City Civil Court Act (VII of 1892), and has been approved by the Government of Madras and sanctioned by the Governor-General in Council

The said allowances shall be calculated according to the scale set out below:—

Class of witnesses	Travelling allowance.			Allowance for subsistence and other expenses, not exceeding per diem
	By rail	By road	By sea or canal	Rs A P
1st Class	1st Class fare	8 annas per mile	Actual expense of Passage	4 8 0
2nd Class	2nd Class fare	4 annas per mile	Do.	3 0 0
3rd Class	Intermediate or if there be no such then 3rd class	2 annas per mile.	Do.	1 8 0
4th Class	3rd Class fare	2 annas per mile.	Do	0 12 0

NOTE—In calculating travelling allowance by road for distances exceeding ten miles, fractions of ten mile unit less than five miles are to be neglected while distances of five miles and above may be treated as equivalent to the unit of ten miles

Rules under section 20 (ii)

On and after the 1st Febuary 1890, all payments for the service of processes by the criminal Courts, subordinate to the High Court, in the case of offences other than offences triable by summons case procedure, for which the police may arrest without warrant shall be collected according to the rates fixed in the sub-joined schedule:—

SCHEDULE—CRIMINAL COURTS

	Rs A P
(1) Summons to defendant . . .	0 8 0
And for every additional defendant if applied for at the same time and if resident in the same neighbourhood . . .	0 4 0
(2) Summons to a witness	0 8 0
And for every additional witness if applied for at same time, and if witness resides in the same neighbourhood . . .	0 4 0

(3) Warrant of arrest	0 12 0
(4) Notice, Order, Injunction, or Warrant not otherwise provided for	0 8 0

N B.—(1) If a process is to be served or executed within a radius of six miles from the Court-house, half the above rates oly are to be charged The Judge or every Court shall determine what villages are within the above radius, and a list of such villages shall be notified in a conspicuous place in the Court-house.

(2) When a warrant remains unexecuted for fifteen days after its delivery to the officer entrusted with its execution, an additional fee at the same rate shall be levied from the party at whose instance the warrant was issued for every fifteen days or portion of fifteen days until return is made, provided that the delay in executing the said warrant is not attributable to the officer of the Court

2 No fees shall be levied on processes issued upon complaints by public servants or officers or servant of a railway company acting in their official capacity, which under section 19, cl (xviii) of the Court Fees Act, 1870, are exempt from complaint fees

PROCESS-FEES—CITY CIVIL COURT

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SCHEDULE.

Nature of Process.	Amount leviable. In suits in which the value of the subject-matter in disputes does not exceed Rs. 1,000	Amount leviable. In all other suits.
	Rs. A. P.	Rs. A. P.
I. For each summons or notice— (*a*) to a single defendant or witness.	0 8 0	1 0 0
(*b*) to every additional defendant or witness residing in same municipal division of the City of Madras if the processes be applied for at the same time	0 4 0	0 8 0
II For every warrant— (*a*) of arrest in respect of every person to be arrested. (*b*) of attachment in respect of every such warrant. (*c*) of sale in respect of every such warrant (*d*) of delivery of possession in respect of every such warrant.	1 0 0	2 0 0
With an additional fee for the services of every officer entrusted with the execution of the warrant for each day occupied in its execution after the third day beginning the day on which the warrant was issued.	0 4 0	0 6 0
III. For every proclamation, injunction or order	1 0 0	2 0 0
An additional fee being leviable after the third day as above	0 4 0	0 6 0
IV. For every process not otherwise provided for herein.	0 8 0	1 0 0

V. In respect of sales, a fee by way of poundage on the purchase money calculated at ½ anna in the rupee on the first 500 rupees and ¼ anna in the rupee on any additional sum above 500 rupees

NOTE 1.—Any party may deposit the cost of proceeding by railway or any public conveyance, where such is available and in such case the process-server shall be bound to proceed

by such railway or public conveyance and the cost so deposited shall be part of costs of the cause.

NOTE 2—For processes applied for and ordered to be executed as emergent, the fee will be the ordinary fee and half as much again

NOTE 3—All fees chargeable under this schedule shall be collected and dealt with in the same manner as fees chargeable under the Court Fees Act (VII of 1870).

The Punjab Process fees.

1. The Civil and Revenue Courts of the Punjab shall, for the purpose of levying process fees, be divided into three grades as shown in the annexed table —

Grade.	Civil Courts	Revenue Courts
First	The High Court	The Court of the Financial Commissioners
Second	District Courts	Courts of Commissioners
Third	Courts subordinate to the District Court.	Courts of Collectors and Assistant Collectors.

A Tribunal under the Sikh Gurdwaras Act of 1925 shall be deemed a Civil Court of the second grade.

2 Fees for the service of processes shall be levied in each grade of Court according to the following scale, namely:—

Nature of process.	Courts of 1st grade.	Courts of 2nd grade	Courts of 3rd grade.
Summons, notice or other process, not being a warrant of arrest or of abatement.	2 0 0	1 0 0	1 0 0
Warrant of attachment	4 0 0	2 0 0	1 0 0
Warrant of arrest	4 0 0	2 0 0	0

NOTE—The classification of Revenue Courts in the scale of fees to be levied in them under 2 1 sanctioned by the Financial Commissioners.

3. A separate process shall be issued for each person summoned or arrested, or upon whom a notice is served; and, subject to the rule next following, a separate fee shall be charged for each process.

4 When any process, other than a warrant of arrest or of attachment, is to be served upon four or more persons being parties, one fee only shall, according to the scale in Rule 2, be charged in respect of the first four processes and an additional fee, according to the subjoined scale, shall be charged for each process to be served in excess of four, provided that the aggregate amount of the fee leviable under this rule shall not exceed the maximum prescribed for each grade of Court,—

	Courts of 1st grade.	Courts of 2nd grade.	Courts of 3rd grade.
	Rs A P.	Rs A P.	Rs A P
Rate of additional fee .	0 8 0	0 4 0	0 2 0
Maximum	15 0 0	10 0 0	5 0 0

NOTE—This rule is not applicable to processes issued to witnesses

5. No fee shall be chargeable for any process of a Criminal Court issued through the Police in cognizable cases In non-cognizable cases a fee of four annas shall be levied for every such process, whether such process be issued through the process-serving establishment or the Police.

6 A process issued by any Court in British territory, whether of Civil, Revenue or Criminal jurisdiction, shall be served free of charge by any Court in the Punjab if it be certified on the process that the proper fee has been levied under the rules in force in the territory in which the Court issuing the process is situated When any Court in the Punjab, whether of Civil, Revenue or Criminal jurisdiction, transmits a process for service or execution to any Court beyond its jurisdiction, a certificate shall be endorsed on the process that the fee chargeable under Rule 2 or Rule 4, as the case may be, has been levied

7. Ordinarily process-servers should travel on foot when proceeding to serve or execute processes; but in special cases, the Judge of the Court issuing the process, may permit the journey to be made by railway. In such cases the permission should be in writing and the railway fare should be charged to the budget heads. Travelling allowance of process-servers under the process-serving establishment are not charged to the person at whose instance the process is issued.

PART III.

Rules under section 22.

1 The High Court shall fix, and shall from time to time, as may be necessary alter the maximum number of process-servers to be retained for the Court of each Commissioner, District and Sessions Judge and for each district in the province.

2 The number of process-servers to be retained in each district shall be allotted by the senior Subordinate Judge, subject to the control of the District Judge and High Court, to the various Courts of the District in such manner as shall be most convenient for the service of processes

3 In submitting proposals with regard to the maximum number of process-servers to be retained in any district, and in distributing the process-servers retained amongst the various Courts, the senior Subordinate Judge should ascertain, and report when necessary, the number of processes issued from his own Court and from every other Civil, Revenue and Criminal Court in the district during each month of the previous year; and the maximum number of process-servers fixed for each Court shall be so many as are sufficient for the service of the largest number of processes ascertained to have been issued in any one month In calculating the number of process-servers capable of serving such ascertained number of process, regard shall be paid to,—

(*a*) the average distance travelled by the peon,

(*b*) the nature of the country to be traversed and the local circumstances;

(*c*) the number of process-servers by whom the processes were actually served

4 Should it appear to the Court, on the motion of a party to a suit or proceeding, or otherwise, that, for the convenience of the parties or for some other reason, it is expedient that any process should be executed by special messenger, such process shall be so executed Except in the case of a warrant for arrest, a special fee will be payable for such emergent service; and the Court will at the time of making its order, declare by whom the fee shall be paid and whether it shall be included in the costs of the suit or be charged to a particular party.

PART IV.

4. Except in cases of necessity, when the special leave of the Court must be obtained, no person other than a registered process-server shall be employed in the service or execution of any Civil or Criminal process; the reason for granting such leave should be recorded.

6 The total amount of the contingencies expended o process-serving establishment should not exceed ten per cent c the cost of such establishment for the year.

8 *No process shall be prepared or issued* until the prop fee for the service thereof has been paid. When such fee i paid the court-fee label denoting the fee shall be affixed to th diary of process fees and immediately purchased, the proce shall then be prepared, it being left to the party who applied fc the process to issue it or not as he thinks fit. This will obviat the necessity for making any refund of the value of the court fees filed in account of processes which are not eventually issued

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ALLAHABAD HIGH COURT.

COURT-FEES AND PROCESS-FEES.

1 At any District or subordinate Court, where the Distric Judge considers it necessary, the central Nazir or Nazir ma be charged with the duty of
for copies The paper will
sub-treasury in quantities o
in the first instance without payment in ready money, and afte wards upon payment for last supply received The centra Nazir or Nazir may similarly be charged with the duty of selling court-fee stamps of the value of one, four, and eigh annas and one rupee, which will be supplied from treasurie or sub-treasuries in quantities of value not less than fifty rupees No commission shall be allowed on the sale by a central Nazi or a Nazir of impressed paper or court-fee stamps.

No record of sale of impressed paper need be kept; but a day book kept in the form prescribed by Rule 43.

2 The fees exhibited in the following table shall be charged for serving and executing the several processes against which they are respectively ranged:—

Table of fees.

Part I—In the High Courts, Appellate Jurisdiction:—

	Proper fees Rs. A P
Article 1—Notice of appeal or other notice to respondents, when the respondents are not more than four in number, *one fee* .	3 0 0

When such respondents are more than four in number then the fee abovementioned for the first four, and an additional fee of eight annas for every

Rs A P.

such persons in excess of four. provided that the aggregate amount of the fees levied under this Article shall not exceed fifteen rupees

Article 2—Summons to witnesses when the witnesses are not more than four in number, *one fee* 3 0 0

When such witnesses are more than four in number then the fee abovementioned for the first four, and an additional fee of eight annas for every such witness in excess of four

Article 3—Every warrant of arrest in respect of each person to be arrested . . 5 0 0

Article 4—Notice, proclamation, injunction or other order not specified in any preceding article of this part when the copies to be served or posted are not more than four in number, *one fee* . . 3 0 0

When such copies are more than four in number, then the fee abovementioned for the first four, and an additional fee of eight annas for every such copy in excess of four, provided that the aggregate amount of the fees levied under this article shall not exceed fifteen rupees

Part II *—In the Courts of District Judges, Subordinate Judges, and Judges of Courts of Small Causes when exercising the powers of a Subordinate Judge conferred under section 31 of Act No IX of 1887.—

Article 1—Summons to defendants, notice of appeal or other notice to respondents when the defendants or respondents are not more than four in number *one fee* 2 8 0

When such defendants or respondents are more than four in number, then the fee abovementioned for the first four, and an additional fee of ten annas for every such person in excess of four; provided that the aggregate amount of the fees levied under this Article shall not exceed twelve rupees eight annas.

* NOTE—When a District Judge, Subordinate Judge or Judge Court of Small Causes invested with the powers of a Subordinate is exercising original jurisdiction in any suit in which the value of the subject-matter does not exceed one thousand r fees chargeable will be those prescribed in Part III or Part case may be.

	Rs	A	P.
Article 2.—Summons to witnesses, when the witnesses are not more than four in number, *one fee*	2	8	0
When such witnesses are more than four in number, then the fee abovementioned for the first four, and an additional fee of ten annas for every such witness in excess of four.			
Article 3—Every order of attachment . .	1	4	0
Article 4—In respect of the services of the officer making an attachment in the manner prescribed in Order XXI, Rules 43, 44, 51 or 54 and section 46 of Act No. V of 1908 when property is to be attached in one town or village only, *one fee*	9	0	0
When property is to be attached in more than one town or village specified in the order of attachment, and an additional fee of two rupees for every other town or village, provided that the aggregate amount of the fees levied under this Article shall not exceed fifteen rupees			
Article 5.—Every warrant of arrest in respect of each person to be arrested . .	3	12	0
Article 6†—In respect of the services of each *peon in whose custody a judgment* debtor is left under Order XXI, Rule 40 (3) of Act No. V of 1908 *per diem*	0	6	0
*Article 7.**—Every order for the sale of property—			
(*a*) in respect of the order of sale .	1	4	0
(*b*) by way of poundage on the full amount of the purchase money—			
If the sale be effected through a broker under Order XXI, Rule 76 of Act V of 1908. — The commission payable to the broker, and in addition a sum equal to one quarter of such commission			

† NOTE—Fees will be paid under this Article in advance for such period as the Court may from time to time direct.

* NOTE—The portion (*a*) of this fee must be paid when the process is obtained, and the poundage (*b*) at the time and in the manner prescribed in Rules 11, 15 or 16.

	Rs A P
If the sale be conducted by an officer of the Court or by any other person (not being a Collector or a broker) appointed by the Court	6¼ per cent
Article 8—In respect of the services of the officer making delivery of pssession of property under Order XXI, Rules 31, 35, 36, 95, 96, 98 or 101, of Act No V of 1908 when property is to be delivered in one town or village only, *one fee*	9 0 0

When property is to be delivered in more than one town or village, then the fee abovementioned for the first town or village specified in the warrant of delivery, and an additional fee of two rupees for every other town or village, provided that the aggregate amount of fees levied under this Article shall not exceed fifteen rupees

Article 9—Notice, proclamation, injunction or other oredr, not specified in any preceding Article of this part, when the copies to be served or posted are not more than four in number *one fee* .	2 8 0

When such copies are more than four in number then the fee abovementionedfor the first four and an additional fee of ten annas for every such copy in excess of four, provided that the aggregate amount of the fee levied under this Article shall not exceed twelve rupees eight annas

Article 10 †—If the service of a process other than, a warrant for the arrest of the person, be declared "emergent" as descrobed in Chapter III, Rule 16 . .	1 4 0

Part III—(Except in the suits specified in Part IV) in the Courts of Munsiffs and in Courts of Small Causes—

Article 1—Summons to defendants, when the defendants are not more than four in number *one fee*	1 4 0

When the defendants are more than four in number, then the fee abovementioned for the first four and an additional fee of five annas for every such defendant in excess of four; provided that the aggregate amount of the fees levied under this Article shall not exceed six rupees four annas

† NOTE—This fee will be payable in addition to the ordinary f specified in Article 1, 2 or 9 of this part

	Rs A P
Article 2—Summons to witnesses, when the witneses are not more than four in number, *one fee*	1 4 0
When the witnesses are more than four in number, then the abovementioned for the first four and an additional fee of five annas for every such witneses in excess of four	
Article 3—Every order of attachment . .	1 0 0
Article 4—In respect of the services of the officer making an attachment in the manner prescribed in Order XXI, Rules 43, 44, 51 and 54 and section 46 of Act No. V of 1908 when the property is to be attached in one town or village only *one fee*	4 0 0
When property is to be attached in more than one town or village, then the fee abovementioned for the first town or village specified in the order of attachment, and an additional fee of one rupee for every other town or village, provided than the aggregate amount of fees levied under this Article shall not exceed seven rupees.	
Article 5.—Every warrant of arrest in respect of each person to be arrested . .	2 8 0
*Article 6**—Every order for the sale of property—	
(*a*) in respect of the order of sale .	1 0 0
(*b*) by way of *poundage on the* full amount of the purchase money—	
If the sale be effected through a broker under Order XXI, Rule 76 of Act No. V of 1908 — The commission payable to the broker and in addition a sum equal to one-quarter of such commission.	
If the sale be conducted by an officer of the Court or by any other person (not being a Collector or a Broker) appointed by the Court	6¼ per cent.
Article 7.—In respect of the services of the officer making delivery of possession of property under Order XXI, Rules 31,	

* NOTE.—The portion (*a*) of this fee must be paid when the process is obtained and the poundage (*b*) at the time and in the manner prescribed in Rules 11, 15 or 16.

	Rs	A	P
35, 95, 96, 98 or 101 of Act No V of 1908, when property is to be delivered in one town or village only, *one fee* .	4	0	0

When property is to be delivered in more than one town or village, then the fee abovementioned, for the first town or village specified in the warrant of delivery, and an additional fee of one rupee for every other town or village, provided that the aggregate amount of the fees levied under this Article shall not exceed seven rupees

Article 8 —Notice, proclamation, injunction or other order not specified in any preceding article of this part, when the copies to be served or posted are not more than four in number, *one fee* . . .	1	4	0

When such copies are more than four in number, then the fee abovementioned for the first four, and an additional fee of five annas for every such copy in excess of four, provided that the aggregate amount of the fees levied under this article shall not exceed six rupees eight annas

Article 9 *—If the service of a process, other than a warrant for the arrest of the person be declared "emergent" as described in Chapter III, Rule 16 . .	1	0	0

Part IV —In the Courts of Munsifs and in Courts of Small Causes in suits in which the amount or value of the subject-matter in dispute does not exceed Rs 50

Article 1 —Summons to defendants, when the defendants are not more than two in number, *one fee*	0	10	0

When the defendants are more than two in number then the fee abovementioned for the first two and anadditional fee of three annas for every such defendant in excess of two; provided that the aggregate amount of the fees levied under this article shall not exceed four rupees

Article 2 —Summons to witness, in respect of each witness	0	5	0
Article 3 —Every order of attachment . .	0	10	1

* NOTE —This will be payable in addition to the ordinary fees spec in Article 2 or 8 of this part.

	Rs a p
Article 4—In respect of the services of the officer making an attachment in the manner prescribed in Order XXI, Rules 43, 44, 51 and 54, and Section 46 of Act No V of 1908, when property is to be attached in one town or village only, *one fee*	2 0 0

When property is to be attached in more than one town or village, then the fee abovementioned for the first town or village specified in the order of attachment, and an additional fee of nine annas for every other town or village; provided that the aggregate amount of the fees levied under this article shall not exceed three rupees

Article 5—Every warrant of arrest in respect of each person to be arrested . . .	1 4 0
*Article 6**—Every order for the sale of property—	
(*a*) in respect of the order of sale . .	0 10 0
(*b*) by way of poundage on the full amount of the purchase money—	
If the sale be effected through a broker under Order XXI, Rule 76 of Act V of 1908	The commission payable to the broker and in addition a sum equal to one-quarter of such commission
If the sale be conducted by an officer of the Court or by any other person (not being a Collector or a Broker) appointed by the Court	6¼ per cent
Article 7—In respect of the services of the officer making delivery of possession of property under Order XXI, Rules 31, 35, 36, 95, 96, 98 or 101 of Act No. V of 1908, when property is to be delivered in one town or village only, *one fee* .	2 0 0

When property is to be delivered in more than one town or village, then the fee abovementioned, for the first town or village specified in the warrant of delivery and an additional fee of eight annas for every other town or village; provided that the aggregate

* NOTE.—The portion (*a*) of this fee must be paid in the manner prescribed in Rules 11, 15 and 16.

	Rs A P.
amount of the fees levied under this Article shall not exceed three rupees	
Article 8—Notice, proclamation, injunction or other order not specified in any preceding article of this part, when the copies to be served or posted are not more than two in number, *one fee* .	0 10 0
When such copies are more than two in number, then the fee abovementioned for the first two and on additional fee of three annas for every such copy in excess of two, provided that the aggregate amount of the fees levied under this article shall not exceed four rupees	
Article 9 *—If the service of a process, other than a warrant for the arrest of the person, be declared "emergent" as described in Chapter III, Rule 16	0 10 0

3 Notwithstanding Rule 2, fees for process in execution of a decree or order for money shall be charged, irrespective of the grade of the Court issuing such process and of the value of the original suit, according to the amount, including interest, if any due, upon the decree or order, that is to say, if such amount exceed Rs 1,000 fees shall be charged under Part II; if it be less than Rs 1,000, and more than Rs 50 they shall be charged under Part III, and if it do not exceed Rs 50, they should be charged under Part IV.

4 Notwithstanding Rule 2 no fee shall be chargeable for serving or executing—

(1) any process which may be issued by the Court of its own motion, solely for the purpose of taking cognizance of and punishing any act done or words spoken in contempt of its authority,

(2) any process issued a second time in consequence of an adjournment made otherwise than at the instance of a party or an intervenor.

(3) any copy of a warrant, order or certificate passed under Order XXI, Rules 36, 54 or 96, of Act No. V of 1908, when the fee chargeable under Article 4 or Article 8, Part II, or under Article 4 or Article 7, Parts III and IV, has been paid;

* NOTE —This fee will be payable in addition to the ordinary fee specified in Articles 1, 2 or 8 of this part.

(4) any copy of summons, notice, order, proclamation or other process, posted in a court-house or in the office of a Collector;

(5) any notice, issued by a District Court under Schedule III, paragraph 5 of Act No. V of 1908;

(6) any order intimating withdrawal of attachment or postponement of sale;

(7) any order intimating to a sale officer that permission has been given to a decree-holder to bid for or purchase property under Order XXI, Rule 72, of Act No V of 1908;

(8) any copy of a notice of an application under Act VIII of 1890, sent to a Collector under Chapter XX, Rule 19;

(9) any order directing an officer in charge of a jail to detain or to release a person committed to his custody.

5. No process which comes within the operation of Rule 2, shall be drawn up for service or execution until the fee chargeable under that rule has been paid. The fee shall be paid in court-fee stamps, which shall be affixed either on the application by which Court is moved to issue the process, or, if no such application be filed, on the order by which the Court directs the issue or service of the process. If such an application be filed, it shall bear the requisite stamps for the fee in addition to such stamps, if any, as are needed for its own validity.

APPENDIX III

Notification under S. 26 of the Court Fees Act.

[1] Use of adhesive and impressed stamps.

(a) *3 T S R, dated 14th May, 1932*—In exercise of the power confrred by sections 26 and 27 of the Court Fees Act, 1870, and in supersession of Notification by the Government of India in the Financial Department No 1520, dated 5th March, 1875, the Governor-General in Council is pleased to issue the following directions:—

(i) When in any case the fee chargeable under the said Act as *modified by the Court Fees Amendment* Act, 1922, is less than Rs 25, such fee shall de denoted by adhesive stamps only Such adhesive stamps bearing the words "Court-fees," at present in use, or adhesive stamps of any different shape, size or pattern, bearing the words "Court-fees," which may hereafter be issued for use, *in supersession of, or in addition to the* adhesive stamps now in use

(ii) When in any case the fee chargeable under the said Act amounts to or exceeds Rs 25, such fee shall be denoted by impressed stamps bearing the words "Court-fees," adhesive stamps being only employed to make up fractions of less than Rs 25.

(iii) If in any case the amount of the fee chargeable under the said Act involves a *fraction on an* anna, such fraction shall be remitted

(iv) This Notification shall take effect on and after the 1st June 1883. See Gazette of India, 1883, Pt. I, p 189.

(b) *No 1494-S R, dated the 29th March, 1895*—In exercise of the power conferred by sec. 26 of the Court Fees Act, VII of 1870, and in supersession of so much of paragraph 1 of the Notification in this Department No. 361, dated the 18th April, 1883, as authorised the use of the adhesive stamp, bearing the words "Court-fees," in use on the date of the Notification for denoting the fee chargeable under the said Act, when in any case the fee is less th

Rs. 10, the Governor-General in Council is pleased to direct that in such cases the adhesive stamps to be used shall, with effect from the 1st July, 1895, be adhesive stamps of the size and pattern introduced in 1883, bearing the words "Court-fees" and containing three lines in the middle, with the Queen's head and the value printed on the left side. See Gazette of India, 1895, Pt. I, p 265.

[2] Use of adhesive stamps for fees referred to in sec. 3, para. 1 of the Court Fees Act, 1870 (VII of 1870).

(*a*) *No 4070-S R, dated the 23rd August, 1895*—In exercise of the powers conferred by sec. 26 of the Court Fees Act (VII of 1870), and in supersession of the Notification in this Department No. 1678, dated the 18th July, 1873, the Governor-General in Council is pleased to direct that the fees referred to in the first paragraph of sec. 3 of the said Act shall, with effect from the 1st September, 1895, be noted by adhesive stamps of the size and pattern introduced in 1883, bearing the words "Court-fee" and containing three lines in the middle with the Queen's head and the value printed on the left side, and the word "service" overprinted on the stamps See Gazette of India, 1895, Pt. I, p 722.

(*b*) *No 3318-S R*—In exercise of the powers conferred by sec 26 of the Court Fees Act [VII of 1870], and in continuation of the Notification of the Government of India in the Finance and Commerce Department, No 361 and 4070-S. R., dated the 18th April, 1883, and the 23rd August, 1895, respectively, the Governor-General in Council is pleased to direct that the fees referred to in the first paragraph of sec 3 of the said Act may be denoted by adhesive stamps bearing the Queen's head in a circle in the centre and the value printed on each side thereof and overprinted with the words "High Court Service." See Gazette of India, 1896, Pt. I, p 604

(MADRAS AMENDMENT.)

(*i*) by adhesive stamps of the size and pattern introduced in 1883, bearing the words "Court-fee" and containing three lines in the middle with the king's head and the value printed on the left side and the word 'service' overprinted on the stamps, or

(ii) by adhesive stamps bearing the King's head in a circle in the centre and the value printed on each side thereof and overprinted with the words 'High Court Service'

[3] Fees for Probates and Letters of Administration.

No 1522-S R, dated the 20th March, 1885—In exercise of the powers conferred by section 26 of the Court Fees Act, 1870, the Governor-General in Council directs that the additional court-fee payable under section 19-E of the said Act on Probates and Letters of Administration shall be denoted either—

(*a*) by impressed and adhesive stamps in the manner prescribed in Notification No 361 of 18th April, 1883, or

(*b*) wholly by adhesive stamps of the kind described in clause (1) of Notification No 361 of 18th April 1883 [See Gazette of India, 1885, Pt I, p 213]

(FOR MADRAS)

The 27th March, 1929.

1 In exercise of the powers conferred by section 26 of the Court Fees Act, 1870 (VII of 1870), as amended by the Devolution Act, 1920 (XXXVIII of 1920) and the Madras Court Fees (Amendment) Act, 1922 (Madras Act V of 1922) and all other powers enabling him in this behalf and in supersession of the notification of the Government of India No 1522, dated 20th March 1885, published on page 213 of Part I of the *Gazette of India*, dated 21st March 1885, the Governor in Council is thereby pleased to direct that the additional court-fee payable under sec 19E of the first mentioned Act on Probates or Letters of Administration shall be denoted either—

(*a*) by impressed and adhesive stamps in the manner prescribed in the notification of the Local Government in the Revenue Department, No 1, dated 25th February 1924, or

(*b*) wholly by adhesive stamps of the kind described in clause 1 of the said notification of the Local Government.

APPENDIX IV

Rules issued by Government of Bengal under sections 27 and 34 of the Court Fees Act.

See Government of Bengal Notification No. 275-S R., dated the 9th March, 1907 (as amended by No. 1092 Com., dated the 23rd June, 1919) as amended.

"Court-fee Stamps defined

1 Adhesive and impressed stamps bearing the words "Court-fee" are called court-fee stamps; and the fees are chargeable under Act VII of 1870, shall be collected only by means of such stamps, subject to the exceptions mentioned in section 3 of the Act

Ex-officio vendors.

2. The treasurer at the head-quarters of a district, and, at sub-divisions, the subordinate officer entrusted with the custody and sale of stamps on behalf of Government, shall be ex-officio vendors, and, shall sell on behalf of Government "court-fee" stamps to licensed vendors, and to the public on application.

Licensed vendors.

3. Such persons as may be licensed by the District Officers shall be licensed vendors, and shall sell to the public such stamps as are indicated in their licenses.

License what to specify.

4 Every license shall specify the name of the licensee, the description of stamps which may be sold under the license, the place of vend, and such other matters as may be necessary, and shall be signed by the authority granting it. The license shall be revocable at any time by the authority who grants it.

Fraction of an anna to be omitted in calculating fee.

5. If, in any case, the amount of the fee chargeable involves a fraction of an anna, such fraction shall be remitted

Number and kind of stamps to be used when fees amount to less than Rs. 25

6. When, in the case of fees amounting to less than Rs 25, the amount can be denoted by a single adhesive stamp, such fee shall be denoted by a single adhesive stamp of the required value. But, if the amount cannot be denoted by a single adhesive stamp, or if a single adhesive stamp of the required value is not available, the next lower value available shall be used, and the deficiency shall be made up by the use of one or more additional adhesive stamps

of the next lower values which may be required to make up the exact amount of the fee

When fees amount to or exceed Rs. 25

7. When, in the case of fees amounting to or exceeding Rs 25, the amount can be denoted by a single impressed stamp, the fee shall be noted by a single impressed stamp of the required value But, if the amount cannot be denoted by a single impressed stamp, or if a single impressed stamp of the required value is not available, an impressed stamp of the next lower value available shall be used, and the deficiency shall be made up by the use of one or more additional impressed stamps of the next lower values available, which may be required to make up the exact amount of the fee, in combination with adhesive stamps to make up fractions of less than Rs. 25

Certificate to be given by a licensed stamp-vendor when a single stamp is not available

8 When the application for the required stamp is made to a licensed vendor of court-fee stamps, and such vendor is unable to furnish a single stamp of the required value, he shall give a certificate to that effect in the form below The certificate referred to must be affixed to the document and filed with it:—

[*Form of Certificate*:

"Certified that a single stamp of the value of Rs required for this document is not available, but, in lieu thereof, I have furnished a stamp of the next lower value available, and made up the deficiency by the use of one or more $\frac{\text{adhesive}}{\text{impressed}}$ stamps of the next lower values available required to make up the exact amount of the fee"]

No such certificate required from an official vendor.

9 No such certificate shall be required under similar circumstances from an official vendor, but the latter shall carefully observe the *same principle of issuing, whenever* practicable, a single stamp of the required value, or when, from any reason, this is not possible, of furnishing a stamp of the next lower value available, and of making up the deficiency by the use of one or more additional stamps of the next lower value available which may be required to make up the exact amount of the fee as directed in rules 6 and 7

Mode of stamping and engrossing instruments for which a single stamp is not available.

10 Any adhesive stamp which may be used under Rule 7 shall be affixed to the impressed stamp of the highest value employed in denoting the fee, or to the first sheet of the document, to be inscribed : such manner as not to conceal the value of the stamp there

When a document is not properly stamped.

11. A document stamped otherwise than in accordance with the preceding rules is not properly stamped within the meaning of section 28 of the Court Fees Act, 1870.

Directions for the use of plain paper with impressed stamps.

12. When one or more impressed stamps used to denote a fee are found insufficient to admit of the entire document being written on the side of the paper which bears the stamp, so much plain paper may be joined thereto as may be necessary for the complete writing of the document, and the writing on the impressed stamps and on the plain paper shall be attested by the signature of the person or persons executing the document.

Licensed vendor to exhibit sign-board, license, etc.

13. Every licensed vendor shall at all times have stuck up, in a conspicuous place outside the place of vend a signboard bearing the name of the vendor with the words *"Licensed Vendor of Stamps"* in the vernacular language of the district He shall also have in the place of vend his license and the Acts of the Legislature and their schedules referring to the stamps sold by him, together with these rules in English, placed so that they can be readily seen and read by purchasers

Particulars to be entered on the adhesive stamps.

14 Every *ex-officio* or licensed vendor shall insert at the time of sale to the public the name of the purchaser, the date of the sale and the signature of the vendor on the blank space left for this purpose on each adhesive court-fee stamp

[*Note*—In Calcutta and other places, where the sale of stamps of low value is so great as to render it difficult to carry out the above Rule 14 in its entirety, the Board have power to relax it to such extent, and in such a manner, as may appear necessary, provided that no such relaxation shall apply to stamps of the value over one rupee; and that, in each case, the extent and manner of the relaxation shall be distinctly stated in the order, and be published for general information (*vide* Notification, entries Nos 6, 10 and 11, pages 73 and 75, Appendix A.—II, of the stamp Manual.]

Particulars to be entered on impressed stamps.

15. Every *ex-officio* or licensed vendor shall write at the time of sale, on the back of every impressed court-fee stamp which he sells, the date of the sale, the name of the purchaser, and the value of the stamp in full words, and shall affix his signature to the endorsement.

The licensed vendors of stamps in Calcutta at the High Court, the Customs House, the Calcutta Collectorate, the Police Court and the Small Cause Court and in the 24-Perganas at Alipore shall not be required to write at the time of sale the name of the purchaser and the date of sale on adhesive court-fee stamps sold by them upto and inclusive of the value of one rupee They must, however, affix their signatures to such label or labels before delivery thereof to the purchaser. Provided that this relaxation of the rule shall not apply to those adhesive court-fee stamps which are affixed to impressed sheets to make up fractions of less than Rs 25 under Rule 7 of the above rule (*vide* Notification, dated 22nd September, 1932)

Rate of discount on court-fees

16 Licensed vendors at all places purchasing court-fee stamps of the total value of Rs. 25 and upwards at one time by payment of ready money shall receive the same at a discount at the following rates —

For stamps of the value of one rupee or less Re 1-0-8 *per cent*, for stamps of higher value, Re. 0-12-0 *per cent.*

No discount on stamps of more than Rs 50

17 No discount shall be allowed on purchase of any stamps of which the value is more than Rs 50. Stamps above that value are procurable from the District and the Sub-Divisional Officers.

No licensed vendor to get supply on credit

18. No licensed vendor shall be supplied with stamps on credit without the special sanction of Government.

Licensed vendor to obtain supply from treasury only.

19 A licensed vendor shall obtain all supplies of stamps which he is authorised to sell only from the treasury or sub-treasury of the district of which his license was granted, and shall sell stamps only at the place mentioned in his license.

Special arrangement for vend of stamps

20 When persons cannot be found willing to underatke the sale of judicial stamps in any locality in which the establishment of a vendor seems desirable, some person in the public service may be appointed stamp-vendor on a small salary in addition to the usual rate of discount allowed to licensed vendors This system shall not, however, be introduced without the sanction of Government.

Who may be licensed vendors

21. In order that the public may be provided with ev facility for readily obtaining stamp outlying localities where othe stamps might not always be

may be granted to any respectable and reasonably substantial person who wishes to sell them, either as a special business, or as an addition to some other business which he carries on At district and sub-divisional head-quarters, and in large towns where vendors are readily found, the number of them shall be such as to offer reasonable facilities to the public, but it shall be limited so as to allow of a moderate income from the sale of stamps being derived by each. Licenses may be granted to Rural Registrars or their muharrirs, and to Postmasters with the consent of the Postmaster-General

Every licensed vendor to keep a proper supply of stamps

22 Every licensed vendor shall keep such stock of the stamps which he is authorised to sell as is sufficient to meet the public demand If he fails to do so, his license may be cancelled.

Store of stamps to be open to examination

22A * Every vendor licensed to sell stamps shall allow the District Officer, or any gazatted officer duly authorised by him, and, within the compounds belonging to the Civil Courts, the District Judge, or any gazetted officer duly authorised by him, at any time to inspect his work, and to examine the store of stamps in possession.

Ministerial officers not to be allowed any discount

23. No treasurer or other subordinate officer in charge of stamps shall purchase stamps at a discount for sale on his own account to the public.

Special care to be taken with adhesive stamps.

24 Extra precaution shall be taken to preserve the adhesive stamps from damp, and to prevent their becoming firmly fixed togethed by the gum on the back. The stocks shall be carefully examined and dried when necessary, and the place where they are stored shall be always kept properly dry The sheets also, as far as possible, shall be kept face to face and never back to back

Adhesive stamps to be kept in tin-box within the almirah or chest in some districts.

25. As extra precaution seems to be necessary, in the district of Darjeeling and the districts of Presidency, Orissa and Burdwan Divisions to preserve adhesive stamps from damp, the Treasury Officers of these Districts shall keep all adhesive stamps remaining in their hands in a small air-tight and locked tin box within the stamp almirah or chest.

* See Bengal Government Notification No 391 S.R., dated the 22nd April 1907.

Deficiency in store to be at once reported

26. Any deficiency that may be discovered in the store of stamps shall be immediately reported, both to the Controller of Printing, Stationery, and Stamps for information, and to the Commissioner of the Division, who shall report it to the Board.

Issue from double locks.

27 The Treasury Officer shall cause the store under double locks to be opened, and the required quantity of stamps to be counted and delivered in his presence to the treasurer at the head-quarters of a district, and, at sub-divisions, to the subordinate officer entrusted with the custody and sale of stamps on behalf of Government The number and value of stamps delivered to the treasurer at head quarters, and to the subordinate officer at subdivisions, shall be entered in the store-book, and the balance struck at the time of delivery This balance shall be attested by the initials of the Treasury Officer and treasurer at head-quarters, and of the Treasury Officer and subordinate officer at sub-divisions, both of whom shall invariably be present during the whole time that the store under double locks or any part of it remains open The deliveries shown in the store-book shall agree with the indent as approved, and shall also agree with the entries in the account of daily sale (i e, single-lock account) of the treasurer at head-quarters, and of the subordinate officers at sub-divisions.

Issue from double locks at intermediate times.

28 If the treasurer at head-quarters or the subordinate officer at a sub-division requires stamps at any intermediate time, the same process shall be observed as is prescribed in the preceding rule.

Agreement of daily sales with Accountant's register

29 In checking the account of daily sales of stamps as laid down in Rule 18 of the rules prescribed by the Government of India in the Resolution of the Finance Department, No 3715-Exc., dated 30th June, 1905, the officer in charge of the depot shall see that the daily totals agree with the Accountant's Register of Stamp Sales, and initial both

Supervision by District Officers and Commissioners.

30 District Officers shall exercise a strict supervision over their treasuries in this department, and Commissioners shall, in their inspect[illegible] visits, pay particular attention to [illegible] state of the stamp account.

Half-yearly verification of stock.

31. In making the half-year verification of last open days of [illegible] each year, a statement sh[illegible] showing the number [illegible]

denomination of stamps as they are examined, and the verifying officer shall see, by personally testing the same, that the values shown in this statement under each denomination corresponds with the true value as ascertained by actual calculation, and that the total value of each description corresponds with the sum of the totals of each denomination. The total value of each description shall then be carried into the half-yearly certificate prescribed in Rule 36 of the Rules of the Government of India referred to in Rule 29 above.

Personal liability of Treasury Officer

32 Every Treasury Officer shall be held personally liable for any loss that may occur to Government during his incumbency owing to his neglect to observe the rules.

Cross-totalling of entries

33. Inspecting officers invariably, and the officer in charge of the depot from time to time, shall cross-total the entries in the register of stamps under double and single locks.

Account of daily sales in sub-treasury

34 In sub-divisions, when the Sub-Treasury Officer is present at his station, and no account is made over to the sub-treasurer for custody under single lock, the daily account of sales mentioned in Rule 18 of the Rules of the Government of India referred to in Rule 29 shall be kept up by passing the daily sales through the account both as receipts and issues. While the Sub-Treasury Officer is away, the daily account shall be maintained like any other single-lock account.

Refund of impressed court-fee stamps and of court-fee adhesive labels.

35 When any person is possessed of impressed court-fee stamps for which he has no immediate use, or which have been spoiled or rendered unfit or useless for the purpose intended, or when any person is possessed of two or more (or in the case of denominations below Rs. 5, four or more) court-fee adhesive labels which have never been detached from each other, and for which has no immediate use, the Collector shall, on application, repay to him the value of such stamps or labels in money, deducting one anna in the rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction that they were purchased by him with a *bona fide* intention to use them, that he has paid the full price thereof, and that they were so purchased, or, in the case of impressed court-fee stamps so purchased, spoiled, or rendered useless, within the period of six months preceding the date on which they were so delivered

Provided that the Collector may, in special cases, allow refunds when application is made within one year from the date of purchase of the stamps or labels, or also, in the case of

impressed court-fee stamps, within one year from the date on which the stamps were spoiled or rendered useless.

[*Note 1*—Government of India Letter No 3170-S R., dated the 28th June 1900, to the Government of Burma, circulated with the Board's Circular Order No 3 of August 1900.—

Published with the Board's Circular Order No 5 of March 1888

The Government of India has ruled that, under the rules in paragraph 1 of the Resolution in the Department of Finance and Commerce No 132, dated the 11th January 1888, refunds of the value of impressed court-fee stamps can be granted in cases in which the plaint for filing a suit has been written on the stamps, but has not been presented to the Court, the necessity for doing so having ceased to exist

Note 2—*See* Resolution of the Government of Bengal, Financial Department, No 687-S R, dated the 16th November 1909, delegating power to subordinate authorities below the rank of Collector to sanction refunds of stamps—Entry No. 3, Appendix C—IV, page 213 of the Stamp Manual

Note 3—Government of Bengal, Financial Department, Letter No 210-T S R, dated the 21st June 1910

In Government Order No 19T, dated the 14th August 1874, it was decided that it is within the power of Government to waive its own rights, and to refund the value of judicial stamps, if it thinks proper to do so It was also laid down that refunds should not, as a rule, be allowed; but that they should be permitted only under circumstances of special hardship each case being separately reported for the order of Government In accordance with this decision, the Government of Bengal has hitherto dealt with such applications for refunds except in the case of probates and letters of administration, regarding which there are specific provisions in section 19A to 19C of the Court Fees Act, 1870.

The Government of Bengal has ruled that the power of granting refunds of judicial stamps (in cases not expressly provided for in the rules of Government) should in future be exercised by the Board, who will continue to be guided by the principles prescribed in 1874.]

Refund of value of stamps to vendors less one anna in the rupee.

36 (1) In the following cases, the full value of the stamps returned into store, less one anna in the rupee, shall be paid to the stamp-vendors:—

(*a*) When the vendor resigns his license;
(*b*) when the license is revoked for any fault the licensee;
(*c*) when the stamps are returned on the deat vendor;

(*d*) when the stamps are returned on the application of the vendor for leave to restore any stamps.

Refund of value of stamps to vendors less discount

(2) In the following cases, the full value of stamps returned into store, less only the discount allowed on their sale, shall be paid to the licensed vendors—

(*a*) When stamps are returned on expiry of the license;

(*b*) when they are recalled by Government;

(*c*) when the license is revoked for any cause other than the fault of the licensee:

Stamps may be exchanged

Provided that a licensed vendor may exchange unsold stamps, which are fit for use, for other stamps of the same kind Provided also that no adhesive stamp shall be received back into store unless, in case where the value of each label is not less than Rs. 5, there are at least four of such labels which have never been detached from each other.

Refund of adhesive labels attached to impressed sheets of court-fee stamps.

37 When adhesive labels are attached to impressed sheets of court-fee stamps in accordance with the directions contained in Notification by the Government of India No 3 T. S R dated the 14th May, 1932, such labels shall be regarded as impressed stamps for the purposes of refund under the rules.

Refund of the value of the stamp on the plaint presented to any Civil or Revenue Court

38. When a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court, in such a form that the presiding Judge or officer, without finding the defendant, rejects it, not for any substantial defect, but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint should be refunded on presentation of an application to the Collector of the District in which the Court is situated, together with a certificate, from the Judge or officer who rejected the plaint, that it was rejected upon the circumstances above described, and that the value of the stamp should, in his opinion, be refunded.

Renewal, on the certificate of the presiding officer of any Court, of adhesive court-fee stamps which have been rendered useless

39 The presiding officer of any Court, when adhesive court-fee stamps are used, shall, in the exercise of his discretion, be competent to issue a certificate for the renewal, free of charge, of the stamp or stamps on any document, in any case in which the re-writing of such document has,

through inadvertence or accident, been, in his opinion rendered necessary, or when, after it has been duly stamped, and the stamps have been cancelled, it is found that the reason for presenting it to, or filing it in, the court has ceased to exist Such certificate shall be sufficient authority to the Collector or officer in charge of a subdivision, as the case may be, to issue to the holder of a certificate other stamps of the value specified in the certificate, on delivery of the stamps which have been rendered useless

Renewal of stamps used under section 3 of the Court Fees Act in the High Court of Calcutta on the certificate of the taxing-officer

40 As regards stamps used under Section 3 of the Court Fees Act in the High Court of Calcutta, the taxing-officer mentioned in Section 5 of the Court Fees Act, VII of 1870, is in the exercise of his discretion, competent to issue a certificate for the renewal, free of charge, of the stamps on any document in cases when the re-writing of such document, has, through inadvertence or accident, been, in his opinion, rendered necessary, or when, after a document has been duly stamped, and the stamps cancelled it is found that the reason for presenting it to, or filing it in, the court has ceased to exist Such certificate shall be sufficient authority to the Collector to issue to the holder of the certificate other stamps of the value specified in the certificate on delivery of the stamps which have been rendered useless

Contents of application

41 Application for refund or renewal shall be made in the printed form given below (which shall be obtained from the officer in charge of the Forms Department by indent in the usual way), containing the particulars required by law, with counterfoil including the receipt to be given by the Collector, and the receipt for money or fresh stamps, as the case may be to be given by the party. These forms are to be obtained from the Nazir or stamp-vendors at one pice per sheet. Stamp-vendors may obtain the forms from the Collector's office at the rate of eighty copies per rupee for retail to the public at one pice per sheet and, where such printed forms are available, they shall be used by applicants:—

<table>
<tr><th>FORM OF APPLICATION FOR REFUND OR RENEWAL</th><th>APPLICANT'S RECEIPT</th><th>COLLECTOR'S RECEIPT</th></tr>
<tr>
<td>1 Name of applicant.
2 Description of stamp (*i e*, impressed or denoted)
3. Value
4 Date of the purchase
5 Where and from whom purchased.
6 Date of the stamp becoming spoiled or unfit for use.
7 Manner in which the stamp has become spoiled or unfit for use
8 Whether the application is for refund or renewal.

I do hereby declare that the statements made above are true to the best of my knowledge and belief.

Signature of applicant.)
10 Date fixed for disposal
11. Date of disposal
12 Final order.
13 Initial of Collector</td>
<td>Received from the Collector of . . the sum of Rs. ... only, being the value of spoiled stamps, less one anna in each rupee of the nominal value.

(*Signature.*)

(*Date*)

Received from the Collector of . fresh stamps as follows —
<table><tr><th>No</th><th>Value</th><th>Amount</th></tr><tr><td></td><td></td><td></td></tr><tr><td>Total</td><td></td><td></td></tr></table>
(*Signature of Applicant.*)
(*Date*)</td>
<td>Received an applica-tion with . . spoiled stamps, value Rs praying for refund neweal thereof und section . . Act VII 1870. Of the stamps, value Rs . . are herewith return as inadmissible.
Orders will be pass on

(*Signature of the Collector*
(*Date.*)</td>
</tr>
</table>

Register of application

42 The Collector shall keep register of applications for refund o renewal in the form given *below*:—

REGISTER OF APPLICATION FOR REFUND OF THE VALUE OR RENEWAL OF STAMPS.

The following particulars shall be entered in this register:—

(1) Serial number of application.

(2) Date of application.

(3) Name of applicant.

(4) Number and description of stamps delivered for refund or renewal—
(a) Number
(b) Description
(5) Value of each stamp
(6) Total value
(7) Abstract and date of Collector's order
(8) Amount of refund granted in cash
(9) Value of stamps allowed to be renewed
(10) Value of stamps returned in respect of which refund or renewal is refused
(11) Date of refund, renewal, or return of stamps to applicant
(12) Receipt of applicant or his duly-authorized agent.
(13) Signature of Collector.
(14) Date of despatch of stamps to the Collector of Printing, Stationary, and Stamps for destruction.
(15) Date of receipt of Controller's certificate of destruction
(16) Remarks.

Procedure after receipt of applications

43 On receipt of an application, the stamped papers shall be counted, and the counterfoil attached to the form shall be filled up and returned to the applicant, who shall be told when the Collector's order will be passed

The Collector to examine the stamps and the ground of application

44 The Collector shall satisfy himself that the stamps are genuine and that no marks of cancelment have been erased He shall also carefully examine the ground of the application before granting the refund *or renewal.*

Particulars to be noted by the Collector at the time of granting refund or renewal

45 If the Collector is satisfied that the applicant is entitled to the refund or renewal, he shall grant such refund or renewal, as the case may be, inserting the necessary particulars in the counterfoil attached to the application, and taking the applicant's receipt thereon.

Procedure to be followed when affidavit or deposition is necessary.

46 If the Collector thinks it necessary to require an affidavit he shall return the application for that purpose If a deputation be thought necessary, the Collector shall take it, or have it taken at once.

N B—The Collector shall bear in mind that it is not obligatory on him to require a deposition or affidavit in eve case It will probably be found sufficient ordinarily to h the application verified as provided in the form of applicatio

47. If the stamp has been brought in a district other that in which it is presented for re or renewal, the Collector shall refer applicant to the Collector of the dis where the stamp was purchased.

Procedure when stamp is purchased in different districts.

48 Applications for refund or renewal may be receive either the Collector or the Stamp De Collector: in the latter case, they sha sent immediately to the Collector for orders.

Who to receive application.

49. The Collector may only, where the circumstances the case are very exceptional, call f report from the treasurer.

Treasurer's report necessary in exceptional cases.

50 Refunds shall, if possible, made on the day of application

Refunds when to be made

51. An application for refund of the value or renewa stamps purchased at a sub-division r be received by the Sub-divisional Offi who shall forward it, with the stan and with the deposition of the applicant if a deposition is co dered necessary, to the Collector for disposal

Procedure when application is made to Sub-divisional Officer

52 Columns 1 to 6 of the register referred to in rule above shall be filled up on the day application is filed, and the remain columns when it has been disposed c

Entries in the register of application where to be filled in.

53 Where an application for refund of the value renewal of spoilt or useless stamps sanctioned, or a deposition, affidavit, further evidence demanded in supp of it, if the amount of the refund fresh stamps are not taken, or the deposition, affidavit, or furt evidence called for is not given, as the case may be, within c year of the date of the order, in either case, the application sh be struck off, and the stamps sent to the Controller of Printi Stationery, and Stamps for destruction.

Circumstances under which applications may be struck off and the stamps destroyed

54 Where a refund or renewal is granted, the Distr Officer shall then and there punch mark the stamp in such a way that can never be presented again.

Cancellation of stamp after grant of refund

55 At convenient intervals, not less frequent than once fortnight, stamped papers, in respect which refund or renewal has be granted, shall be forwarded by t Collector to the Controller of Printin Stationery and Stamps in a sealed packet for destruction, togeth with an extract from the refund register relating to each stam

Cancelled stamps to be forwarded to Controller of Printing, Stationery and Stamps

On receipt of the stamps, the Controller will cause them to be carefully examined to ascertain that they are genuine, and in order, and any irregularity which the Controller may notice shall be communicated to the Collector, who will report to the Board of Revenue

N B—The despatch of stamps in respect of which refund or renewal has been granted shall be so arranged that the first fortnightly batch may reach the Controller of Printing, Stationary and Stamps not later than the tenth of a month, and the second not later than the twentieth (Board's Proceedings of 10th May 1900, Nos 183-84, and of 25th August 1900, No 81, Collection 10, Files 37 and 646 of 1900)

Destruction of stamps by Controller of Printing, Stationery and Stamps.

56 If the Controller finds that the number and value of the stamps received correspond with the extract from the Refund Register, and that the stamps are genuine, he will destroy them, and certify to the Collector that he has done so

For Rules made by

Ajmer Merwara	*see*	Gazette of India, 1903, Pt. II, p 1068
Bombay .	*see*	Bombay R and O., Vol I, and Bombay Government Gazette, 1907, Pt. I, p 723
Burma . .	*see*	Burma Gazette, 1902, Pt. I, p 95, and *ibid,* 1909, Pt. I, p 226
Central Provinces . .	*see*	Central Provinces Gazette, 1902, Pt III, p 70: *ibid,* 1903, Pt. III, p 47
Eastern Bengal and Assam .	*see*	E B and Assam Gazette, 1908, Pt. II, p 642.
Punjab	*see*	Punjab Government Gazette, 1909, Pt I, p 406
United Provinces . . .	*see*	North Western Provinces and Oudh Gazette, 1900, Pt. I, p 621.

APPENDIX V

Rules for Refund of the Value of Court Fee Stamps.

I G Resolution, No. 132, dated the 11th January, 1888

(Amended in Madras by Notification dated the 27th March, 1929.)

In supersession of all existing orders on the subject, th Governor-General in Council is pleased to authorise the refun of the value of impressed court-fee stamps and of court-fe adhesive labels in accordance with the following rules:—

1. (*a*) When any person is possessed of impressed court fee stamps for which he has no immediate use, o which have been spoiled or rendered unfit o useless for the purpose intended, or

   (b) When any person is possessed of two or more (o in the case of denominations below Rs 5, four o more) court-fee adhesive labels *which have neve been detached from each other* and for which h has no immediate use, the Collector shall, o application, repay to him the value of such stamp or labels in money, deducting one anna in the rupee, upon such person delivering up the same to be cancelled and proving to the Collector's satis faction that they were purchased by him with a *bona fide* intention to use them, that he has paid the full price thereof and that they were so pur chased or, in the case of impressed Court-fee stamps, so purchased, spoiled or rendered useless, within the period of six months preceding the date on which they are so delivered Provided that Local Governments may, in special cases, allow refunds when application is made within one year from the date of purchase of the stamps or labels, or, also in the case of impressed Court-fee stamps, within one year from the date on which the stamps were spoiled or rendered useless The Local Gov- ernments may at their discretion delegate this power to any subordinate authority.

2. When a licensed vendor surrenders his license or dies, the Collector may at his discretion, if he considers that the circumstances justify the application, repay to him or his repre- sentatives, as the case may be, the values of stamps and labels,

not spoiled or rendered unfit for use, returned into the Collector's store, deducting one anna in the rupee, or he may issue stamps and labels of other values in exchange, provided that, in the case of adhesive Court-fee labels their value may not be refunded nor stamps and labels of other values issued in exchange, unless, in cases where the value of each label is not less than Rs 5, there are at least two such labels which have never been detached from each other, and in cases where the value of each label is less than Rs 5, unless there are at least four such labels which have never been detached from each other

3. When adhesive labels are attached to impressed sheets of Court-fee stamps in accordance with the direction contained in Notification by the Government of India in this Department, No 361, dated the 18th April, 1883, such labels should be regarded as impressed stamps for the purposes of refund under these rules

Refund rules in the U. P.

See Chap VII of the Stamp Manual, U P

Refund in cases of hardship.

In Government Order No 19-T dated the 14th August, 1874, it was decided that it is within the power of Government to waive its own rights, and to refund the value of judicial stamps if it thinks proper to do so It was also laid down that refunds should not, as a rule be allowed, but that they should be permitted only under circumstances of special hardship, each case being separately reported for the orders of Government. In accordance with this decision, the Government of Bengal has hitherto dealt with such applications for refunds except in the case of probates and letters of administration regarding which there are specific provisions in sections 19A to 19B of the Court-fees Act, 1870 The Government of Bengal has ruled that the power of granting refunds of judicial stamps (in case not expressly provided for in the rules of Government) should in future be expressed by the Board, who will continue to be guided by the principles prescribed in 1874.—*Vide Letter No 210—T. S. R. Government of Bengal, Financial Dept, dated the 21st June, 1910.*

INDEX.

The references are to pages.

B

C

I

J

K

L

Q

R

S

S